



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2011

Ms. Josie L. Ramirez
Assistant District Attorney
Hidalgo County
100 North Closner, Room 303
Edinburgh, Texas 78539

OR2011-07978

Dear Ms. Ramirez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 419635.

The Hidalgo County Sheriff's Department (the "sheriff") received a request for all arrest records and mug shot photographs for any individual charged with a crime in Hidalgo County between March 7, 2011, and March 17, 2011. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you contend the request is unduly burdensome and not specific. You inform us the requestor indicates he will be requesting the same or similar types of information on a repeated basis in the future. The request is for "all arrest records and photographs of mug shots of any individual who has been charged with a crime in Hidalgo County[.]" and is limited, by the requestor, to "the time period of March 7, 2011[,] through the present[.]" which we note is the date on which the sheriff received the request for information. We find this request is specific because it seeks a certain type of records pertaining to a specified category of people during a specified eleven-day period of time. Although a governmental body is not required to comply with a standing request to supply information on a periodic basis, as such information is prepared in the future, this request seeks records the sheriff maintained on the date it received the request. *See* Attorney General Opinion JM-48 at 2

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). You argue that in order to comply with the request, the sheriff would be administratively burdened. We note a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Thus, the sheriff must release the requested information unless it falls within the scope of an exception to disclosure.

Section 552.108(a)(1) of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested arrest records and mug shot photographs pertain to current cases with charges still pending. You also state, however, “[g]iven the timing of the request, it is highly unlikely that any of the [more than 1,000] cases have been adjudicated.” You further state “[d]ue to the volume of the request, it is impossible for the [sheriff] to determine which, if any cases, are no longer active.” Based on your representation the sheriff is unable to provide this office with the current status of each of the cases at issue, we find you have failed to sufficiently demonstrate the applicability of section 552.108. Therefore, we conclude the sheriff may not withhold the requested information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, information that relates to an individual’s current involvement in the criminal justice system is not protected by privacy. *See* Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). You assert portions of the requested arrest records constitute criminal history information protected by common-law privacy. Upon review, we find the information we

have marked consists of individuals' compiled criminal histories in which there is no legitimate public interest. Therefore, the sheriff must withhold the criminal history information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim the arrestees' names, dates of birth, and demographic information, such as race, sex, ethnicity, and physical features, in the remaining information are protected by common-law privacy. This office has determined, however, an individual's name is generally not private information. *See* Open Records Decision No. 554 at 3 (1990) (stating disclosure of person's name not invasion of privacy). Furthermore, you have not explained, or otherwise demonstrated, how the remaining information you seek to withhold is highly intimate or embarrassing. Thus, you have failed to demonstrate the applicability of common-law privacy to the remaining information at issue, and the sheriff may not withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. As you have not claimed any other exceptions to disclosure, the sheriff must release the remaining requested information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 419635

Enc. Submitted documents

c: Requestor
(w/o enclosures)