



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2011

Ms. M. Ann Montgomery-Moran
Assistant Ellis County & District Attorney
Ellis County & District Attorney
109 South Jackson
Waxahachie, Texas 75165

OR2011-14008

Dear Ms. Montgomery-Moran:

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# 431079.

The Ellis County Sheriff's Office (the "sheriff") received a request for arrest records for a specified area during a specified time period. You state you have released some of the requested information. You claim some of the remaining information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a search warrant, which we have marked, that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under "other law." You claim the search warrant is excepted from disclosure under section 552.108 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). As such, it is not "other law" for purposes of section 552.022(a)(17). Therefore, the sheriff may not withhold the marked search warrant under section 552.108 of the Government Code. As you have not claimed any other exceptions to disclosure for the search warrant, the sheriff must release the marked search warrant.

Section 552.108(a)(1) of the Government Code excepts 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). Generally, a

governmental body claiming section 552.108(a)(1) 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 report numbers 10-19093, 11-00854, 11-00942, 11-09305, 11-09431, and 11-09666 relate to pending criminal investigations and prosecutions. Based upon your representation and our review, we conclude the release of these reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that the information you seek to withhold contains statutory warnings and a notices of suspension. The arresting officer provided copies of these forms to the arrestees. You have not explained how releasing this information, which has already been seen by the arrestees, would interfere with the detection, investigation, or prosecution of this crime. *See Gov't Code* § 552.108(a)(1). Accordingly, the statutory warnings and notices of suspension may not be withheld under section 552.108(a)(1). However, section 552.108(a)(1) is generally applicable to the remaining portions of report numbers 10-19093, 11-00854, 11-00942, 11-09305, 11-09431, and 11-09666.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 10-19033 pertains to a closed case that concluded in a final result other than conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to report number 10-19033.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information and the statutory warnings and notices of suspension, the sheriff may withhold report numbers 10-19093, 11-00854, 11-00942, 11-09305, 11-09431, and 11-09666 under section 552.108(a)(1) of the Government Code. In addition, with the exception of basic information, the sheriff may withhold report number 10-19033 under section 552.108(a)(2) of the Government Code.¹

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Therefore, the sheriff must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

We note the remaining information contains fingerprints. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.³

Section 552.101 of the Government Code also encompasses the common-law right of 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

In summary, with the exception of basic information and the statutory warnings and notices of suspension, the sheriff may withhold report numbers 10-19093, 11-00854, 11-00942, 11-09305, 11-09431, and 11-09666 under section 552.108(a)(1) of the Government Code. In addition, with the exception of basic information, the sheriff may withhold report number 10-19033 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.⁴

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/bs

Ref: ID# 431079

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note you have marked social security numbers in the remaining information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code 552.147(b).