



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 3, 2011

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2011-14209

Dear Ms. Rangel:

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# 431642.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all reports regarding case numbers 11-7101 and 08-20812, all reports involving a named individual, and any reports involving two named individuals. You indicate the sheriff has provided some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (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

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<sup>1</sup>We 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.

(Tex. 1976). 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. You contend the present request requires the sheriff to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' rights to privacy. Although incident report numbers 11-7101 and 08-20812 list one of the named individuals as a suspect, these reports were specifically requested in the request. Thus, we find report numbers 11-7101 and 08-20812 do not constitute that individual's compiled criminal history. Furthermore, we note the remaining incident reports you have submitted pertain to one or more of the named individuals, but do not list the named individuals as suspects, arrestees, or criminal defendants. Thus, none of the submitted information constitutes an individual's compiled criminal history and we will consider your remaining claims under sections 552.101, 552.108, and 552.130 for the submitted information.

We note one of the submitted incident reports pertains to an alleged sexual assault. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. In this instance, the request reflects the requestor knows the identity of the alleged sexual assault victim listed in the incident report at issue. Upon review, we find withholding only the alleged victim's identity from the requestor would not preserve the alleged victim's common-law right of privacy. Accordingly, the sheriff must withhold the incident report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

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,

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

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). Although you claim incident report number 08-20812 pertains to a pending criminal investigation, we note the report reflects it involves an alleged Class A misdemeanor criminal mischief charge that occurred in 2008. *See* Penal Code § 28.03(b)(3) (defining parameters for Class A misdemeanor). The statute of limitations for this misdemeanor offense is two years. *See* Crim. Proc. Code art. 12.02 (stating Class A misdemeanors subject to two year limitations period). More than two years have elapsed since the events giving rise to the investigation in report number 08-20812, and you have not informed this office any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Therefore, the sheriff has failed to demonstrate the applicability of section 552.108(a)(1) to incident report number 08-20812. Consequently, the sheriff may not withhold any part of incident report number 08-20812 under section 552.108(a)(1) of the Government Code.

You also state incident report number 11-14545 pertains to a pending criminal investigation. Based on your representation and our review, we determine release of this report 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). Accordingly, we find incident report number 11-14545 is subject to section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Pruitt*, 551 S.W.2d 706. You assert incident report numbers 11-7101, 08-28799, and 06-17842, as well as computer-aided dispatch (“CAD”) report number P111600677, pertain to criminal investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to

the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. In Open Records Decision No. 649 (1996), this office concluded information contained in a CAD report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold incident report number 11-14545 under section 552.108(a)(1) of the Government Code and incident report numbers 11-7101, 08-28799, and 06-17842, as well as CAD report number P111600677, under section 552.108(a)(2) of the Government Code.<sup>3</sup> You assert, however, portions of the basic information in CAD report number P111600677 are protected by common-law privacy.

As previously noted, the Texas Supreme Court discussed the common-law privacy test requirements in the *Industrial Foundation* decision. 540 S.W.2d at 683-685. As also previously discussed, the types of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked in CAD report number P111600677 is protected under common-law privacy. Therefore, the sheriff may not release the marked information as basic information. The sheriff must release the remaining basic information.

Incident report number 08-20812 contains driver's license information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)). We have marked a driver's license number and expiration date in report number 08-20812. The sheriff must withhold this information under section 552.130 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states.

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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining argument against disclosure for this information.

Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Although you generally claim some of the remaining information constitutes CHRI, we find none of the remaining information consists of CHRI generated by the NCIC or TCIC. Consequently, you have failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

In summary, the sheriff must withhold the incident report we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold incident report number 11-14545 under section 552.108(a)(1) of the Government Code and incident report numbers 11-7101, 08-28799, and 06-17842, as well as CAD report number P111600677, under section 552.108(a)(2) of the Government Code. In releasing the basic information from CAD report number P111600677, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the driver’s license information we have marked in report number 08-20812 under section 552.130 of the Government Code. The sheriff must release the remaining information.<sup>4</sup>

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<sup>4</sup>We note the information being released includes the requestor’s driver’s license information, which is generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person’s privacy, the requestor has a right of access to her own private information under section 552.023(a) of the Government Code. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests). The information to be released also contains a social security number that does not belong to the requestor. 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 a decision from this office under the Act. *Id.* § 552.147(b).

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](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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 431642

Enc. Submitted documents

c: Requestor  
(w/o enclosures)