



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2011

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

OR2011-15142

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# 433309.

The Ellis County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified address and two named individuals. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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. 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. 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. The present request requires the sheriff, in part, to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹ We note you have submitted information that pertains to the named individuals, as well as the specified address, but does not list the named individuals as suspects, arrestees, or criminal defendants. Thus, we will consider your arguments under sections 552.108, 552.130, and 552.147 for this information.

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 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). You seek to withhold the information you have marked in incident report numbers 07-08498 and 06-16275. You state these reports pertain to concluded criminal investigations that did not result in convictions or deferred adjudication. Based on your representations and our review, we find the sheriff may withhold the information you have marked in incident report numbers 07-08498 and 06-16275 under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). Therefore, the sheriff must withhold the driver's license and license plate numbers you have marked, as well as the license plate number we have marked, in the remaining information under section 552.130 of the Government Code.²

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

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

You claim the social security number you have marked in the remaining information is excepted from disclosure under section 552.147 of the Government Code. This section provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). Thus, the sheriff may withhold the marked social security number under section 552.147 of the Government Code.³

In summary, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff may withhold the information you have marked in incident report numbers 07-08498 and 06-16275 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the marked driver’s license and license plate numbers under section 552.130 of the Government Code. The sheriff may withhold the marked social security number under section 552.147 of the Government Code. The sheriff must release the remaining 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

³We note 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.

Ref: ID# 433309

Enc. Submitted documents

c: Requestor
(w/o enclosures)