



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

Ms. Tamma Willis
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2011-15634

Dear Ms. Willis:

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# 434174.

The McLennan County Sheriff's Office (the "sheriff") received a request for information pertaining to each time eighteen named individuals were booked into the McLennan County jail.¹ A second request from the same requestor seeks information pertaining to the last time eighteen named individuals were booked into the McLennan County jail. You indicate the sheriff has no information pertaining to some of the named individuals.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹We note the sheriff received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

³We 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.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. This office has found 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. United States 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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, we note because the common law right to privacy is a personal right that lapses at death, common law privacy does not protect information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981).

The present requests seek unspecified law enforcement records pertaining to eighteen named individuals. We agree this request requires the sheriff to compile the named individuals’ criminal histories and thus generally implicates the named individuals’ rights to privacy. However, you indicate some of the named individuals at issue are deceased. Therefore, to the extent the sheriff maintains law enforcement records listing any of the named individuals as suspects, arrestees, or criminal defendants and those individuals are living, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. However, if any of the named individuals are deceased, the sheriff may not withhold information pertaining to those individuals under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure of the information pertaining to deceased individuals, that information must be released.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 434174

Enc. Submitted documents

c: Requestor
(w/o enclosures)