



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2011-16400

Dear Mr. Walker:

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# 437178.

The Montgomery County Sheriff's Department (the "sheriff") received a request for records concerning two specified addresses, the requestor, and another named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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. This section encompasses the common-law right to 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 met. *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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police

stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis.

You assert the present request requires the sheriff to compile unspecified law enforcement records concerning a named individual, other than the requestor, and thus implicates this individual's right to privacy. However, upon review, we find the requestor is seeking specific law enforcement records involving himself and the named individual. Accordingly, the request is not a request for unspecified law enforcement records, and Exhibit B2, which involves the requestor and the named individual, may not be withheld as part of a criminal history compilation. In addition, we note Exhibit B1 does not depict the other named individual as suspect, arrestee, or defendant. This information does not implicate the individual's right to privacy and may not be withheld as part of a criminal history compilation. Accordingly, we will address your additional argument against disclosure of Exhibits B1 and B2.

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). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted reports pertain to ongoing criminal investigations. Based on your representation and our review of the information, we conclude release of this information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, and includes a detailed description of the offenses. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note you seek to withhold the entire investigative portion of the submitted reports. However, the remaining information does not contain information sufficient to satisfy the requirement that detailed descriptions of the offenses be released. Accordingly, the sheriff must release sufficient portions of the report narratives to encompass

detailed descriptions of the offenses. Thus, with the exception of basic information, including sufficient portions of the report narratives to encompass detailed descriptions of the offenses, the sheriff may withhold Exhibits B1 and B2 under section 552.108(a)(1) of the Government Code.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 437178

Enc. Submitted documents

c: Requestor
(w/o enclosures)