



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-17044

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# 436432 (Montgomery ORR# 2011-4711).

The Montgomery County Sheriff's Office (the "sheriff") received a request for any reports involving two named individuals during a specified period. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 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 courthouses 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.

We agree the present request requires the sheriff to compile unspecified criminal history records concerning the named individuals and, therefore, generally implicates their rights to privacy. However, the submitted report related to case number 11A008469 pertains to a domestic disturbance involving both the requestor and one of the named individuals. Upon review, we believe the requestor is seeking, in part, this report involving herself and the named individual. Accordingly, we find the report related to case number 11A008469 does not implicate the named individual's right to privacy, and it may not be withheld under section 552.101 on the basis of common-law privacy. However, to the extent the sheriff maintains any other law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

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 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). You state, and provide an affidavit from the Montgomery County District Attorney affirming, the report related to case number 11A008469 involves a pending prosecution and release of this report would hamper that prosecution. *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). Based on these representations and our review, we agree section 552.108(a)(1) is applicable to this report.

However, as you acknowledge, 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). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See 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 report under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. Pursuant to *Houston Chronicle*, the sheriff must release a sufficient portion of the narrative to encompass a detailed descriptions of the offenses charged. Thus, with the exception of basic information, which must include a sufficient portion of the narrative to

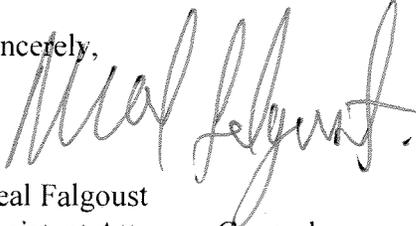
encompass a detailed description of the offense, the sheriff may withhold the report related to case number 11A008469 under section 552.108(a)(1) of the Government Code.¹

In summary, with the exception of the report related to case number 11A008469, if the sheriff maintains any law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which must include a detailed description of the offense, the sheriff may withhold the report related to case number 11A008469 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 436432

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note basic information does not include motor vehicle record information that is subject to section 552.130 of the Government Code. We further note basic information in this instance includes the social security number of the arrested person. Section 552.147 of the Government Code permits the sheriff to withhold this information without requesting a decision from this office. *See* Gov't Code § 552.147(b).