



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

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

OR2011-17612

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# 438539 (Montgomery County No. 2011-4892).

The Montgomery County Sheriff's Office (the "sheriff") received a request for all information concerning a named individual, including information relating to a specified report number and an arrest on a specified date. 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.

Initially, we note pages 1 through 16 of report number 11A003017 are not responsive to the instant request, which seeks only reports pertaining to the named individual.<sup>1</sup> This ruling does not address the public availability of non-responsive information, and the sheriff is not required to release non-responsive information in response to this request.

We next note you have not submitted information responsive to the request for information concerning the named individual's arrest that occurred on February 24, 2011. To the extent information responsive to this part of the request existed on the date the sheriff received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must

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<sup>1</sup>We note the remaining two pages (17 and 18) in what is labeled report number 11A003017 appear to actually belong with report number 11A002762. Thus, these two pages will be included in our discussion of report number 11A002762.

release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We now address your arguments against disclosure of the requested 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.” *Id.* § 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. We agree the instant request, in part, requires the sheriff to compile unspecified law enforcement records concerning the named individual, thus implicating such individual’s right to privacy. Therefore, to the extent the sheriff maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find the instant request also seeks information concerning a specific report number and specific incidents involving the requestor and the named individual. This part of the request does not implicate any individual’s right to privacy. Therefore, report numbers 11A002762 and 11A004554 may not be withheld as a compilation of criminal history. Accordingly, we will address your remaining argument against disclosure for these two reports.

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 report numbers 11A002762 and 11A004554 pertain to pending criminal investigations. Based on your representation and our review of the information, we conclude release of these two reports 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 generally applies to report numbers 11A002762 and 11A004554.

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 detailed descriptions 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 portions of the reports at issue. 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 reports to encompass detailed descriptions of the offenses. Thus, with the exception of basic information, which must include detailed descriptions of the offenses, the sheriff may withhold report numbers 11A002762 and 11A004554 under section 552.108(a)(1).

In summary, to the extent the sheriff maintains unspecified law enforcement records depicting the named individual 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 encompass detailed descriptions of the offenses, the sheriff may withhold report numbers 11A002762 and 11A004554 under section 552.108(a)(1).

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 438539

Enc. Submitted documents

c: Requestor  
(w/o enclosures)