



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12, 2011

Mr. David Aken  
County Attorney  
San Patricio County  
San Patricio County Courthouse, Room 108  
Sinton, Texas 78387

OR2011-18205

Dear Mr. Aken:

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# 438792.

The San Patricio County Attorney's Office (the "county attorney") received a request for "statements and the complaint [regarding] an assault case" involving a named individual.<sup>1</sup> We note you have redacted social security numbers from the submitted information.<sup>2</sup> You state the county attorney has provided most of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the county attorney's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be

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<sup>1</sup>As you have not submitted a copy of the written request for information, we take our description of the request from your brief.

<sup>2</sup>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.

withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, you have not submitted to this office a copy of the written request for information.<sup>3</sup> Consequently, we find the county attorney failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302 of the Government Code); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert the information you seek to withhold is excepted under section 552.108 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the county attorney failed to comply with the requirements of section 552.301(e), the county attorney waived its claim under section 552.108. We note, however, some of the information is subject to sections 552.101 and 552.130 of the Government Code.<sup>4</sup> Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information.

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<sup>3</sup>We also note you have redacted portions of the submitted information. In this instance, we can discern the nature of the redacted information. In the future, unless otherwise authorized, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. *See* Gov't Code § 552.301(e)(1)(D). *But see id.* § 552.130(c) (authorizing governmental body to redact from public release motor vehicle operator's or driver's license or permit, or personal identification document, issued by agency of this state, or another state or country, without necessity of requesting decision from this office under the Act).

<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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 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. Upon review, we find some of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the county attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains driver’s license and license plate numbers, which we have marked. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s 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 county attorney must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the county attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. The county attorney 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](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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 438792

Enc. Submitted documents

c: Requestor  
(w/o enclosures)