



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2011

Ms. M. Ann Montgomery-Moran  
Assistant County & District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2011-18445

Dear Ms. Montgomery-Moran:

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# 439463.

The Ellis County Sheriff's Office (the "sheriff") received a request for all information related to a named individual, including information regarding a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130 and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We first note some of the submitted information is not responsive because it does not pertain to the named individual. This ruling does not address the public availability of non-responsive information, nor is the sheriff required to release such information in response to this request.

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 exception 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 demonstrated. *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 that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the requestor seeks, in part, "all information relating to any arrests or reports" concerning the named individual. We find this portion of the request requires the sheriff to compile unspecified law enforcement records concerning the named individual, thus implicating his right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

However, the requestor also seeks information concerning a specified case of assault. This portion of the request does not implicate the privacy interests of the named individual. We note you have submitted information concerning this incident. Accordingly, we will address your remaining arguments against disclosure of this information.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, and subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To prevail on its claim that section 552.108(b)(1) exempts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You assert the report at issue relates to a pending criminal investigation and is protected by subsection 552.108(a)(1). However, you also indicate the related case has concluded in a conviction or deferred adjudication. Because you have given contradictory arguments for its applicability, we find you have failed to demonstrate subsection 552.108(a)(1) applies to the submitted information. Thus, the report at issue may not be withheld under subsection 552.108(a)(1). You also generally assert the report is protected by subsection 552.108(b)(1). However, we find you have failed to explain how the release of this information would interfere with current and future law enforcement and crime prevention efforts in general. Therefore, the sheriff may not withhold this information under subsection 552.108(b)(1).

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator’s or driver’s license, title, or registration, issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)). Therefore, the sheriff must withhold the information you have marked, and the additional information we have marked, under section 552.130.

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 an attorney general decision under the Act. *See* Gov’t Code § 552.147(b). Therefore, the sheriff may withhold the social security numbers you have marked under section 552.147.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with

common-law privacy. In case number 10-12080, the sheriff must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code, and may withhold the information you have marked under section 552.147 of the Government Code. The remaining information in case number 10-12080 must be released to the requestor.

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 # 439463

Enc. Submitted documents

c: Requestor  
(w/o enclosures)