



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2012

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County Attorney's Office  
301 Jackson Street Suite 728  
Richmond, Texas 77469

OR2012-06001

Dear Ms. Rangel:

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# 452069.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information related to two specified case numbers and statements made by two named deputies.<sup>1</sup> We understand some of the requested information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.<sup>2</sup>

Initially, we note some of the submitted information related to case number 09-CR12-84376 may be maintained by a justice of the peace ("JP") court. Although the Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection

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<sup>1</sup>We note the submitted request for information indicates the sheriff's office sought clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff's office to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

with the transaction of official business by a governmental body,” Gov’t Code § 552.002(a)(1), the Act’s definition of “governmental body” “does not include the judiciary.” *Id.* § 552.003(1)(B). Thus, information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). Therefore, to the extent the submitted information related to case number 09-CR12-84376 is maintained exclusively by a JP court, any such information is not subject to the Act, and this decision does not address the public availability of any such information.<sup>3</sup> To the extent the submitted information related to case number 09-CR12-84376 also is maintained by the sheriff’s office, we will consider your arguments against its disclosure, along with the rest of the information the sheriff’s office seeks to withhold.

We begin with your claims under section 552.108 of the Government Code, as it is the most inclusive exception you raise. Section 552.108(a)(1) 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 and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertaining to report numbers 10-2231 and 10-2928 is related to a criminal prosecution that resulted in a conviction. You explain, however, and have provided documentation demonstrating, that the conviction was appealed and the appeal was pending when the sheriff’s office received this request for the information at issue. You contend release of the information at issue could interfere with the prosecution or investigation of the case. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the submitted information pertaining to report numbers 10-2231 and 10-2928, including the information we have marked. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

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<sup>3</sup>We note judicial records may be public under other sources of law. *See* Gov’t Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov’t Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered to be public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state report number 09-28040 is related to a case that was closed and did not result in a conviction or a deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to the information in report number 09-28040.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff’s office must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The sheriff’s office may withhold the rest of the submitted information pertaining to report numbers 10-2231, 10-2928, and 09-28040 under section 552.108 of the Government Code.<sup>4</sup>

Next, we address your claims under section 552.101 of the Government Code for the information related to case number 09-CR12-84376. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” Gov’t Code § 552.101, and encompasses information other statutes make confidential. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).<sup>5</sup> Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1)

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<sup>4</sup>As we are able to make this determination, we need not address your other arguments against disclosure of this information.

<sup>5</sup>We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2) (defining “criminal history record information”).

and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). Although you appear to contend the information related to case number 09-CR12-84376 includes CHRI, you have not demonstrated that any of the information at issue was obtained from the NCIC or TCIC networks. We therefore conclude the sheriff's office may not withhold any of the information related to case number 09-CR12-84376 under section 552.101 of the Government Code in conjunction with federal law or subchapter F of chapter 411 of the Government Code.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Although the submitted information related to case number 09-CR12-84376 includes a compilation of criminal history information, the information in question pertains to the requestor. The requestor has a right of access to any information the sheriff's office would be required to withhold from the public to protect his privacy interests. *See Gov't Code* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>6</sup> We therefore conclude the sheriff's office may not withhold any of the information related to case number 09-CR12-84376 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary: (1) to the extent the submitted information related to case number 09-CR12-84376 is maintained exclusively by a JP court, any such information is not subject to the Act, and this decision does not address the public availability of any such information; and (2) the sheriff's office may withhold the submitted information pertaining to report numbers 10-2231, 10-2928, and 09-28040 under section 552.108 of the Government Code,

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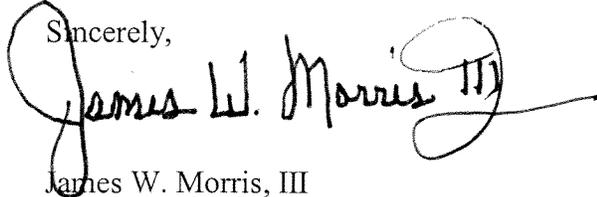
<sup>6</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Gov't Code* § 552.023(a).

except for basic information, which must be released.<sup>7</sup> Any information related to case number 09-CR12-84376 the sheriff's office maintains must be released.<sup>8</sup>

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 black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 452069

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>7</sup>We note basic information includes an arrested person's social security number. 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. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

<sup>8</sup>In the event the sheriff's office maintains the criminal history information related to case number 09-CR12-84376, we note the sheriff's office would be required to withhold that information from a member of the general public to protect the present requestor's privacy. Thus, in the event it maintains the criminal history information and receives another request for it, the sheriff's office should resubmit that information and request another decision. *See* Gov't Code §§ 552.301(a), .302.