



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

Mr. Robert Henneke
County Attorney
County of Kerr
County Courthouse, Suite BA-103
700 Main Street
Kerrville, Texas 78028

OR2012-07210

Dear Mr. Henneke:

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# 453642.

The Kerr County Sheriff's Office (the "sheriff's office") received a request for all reports concerning the requestor, his spouse and two other named individuals. You state some information has been released to the requestor. You claim portions of the requested information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses the doctrine of 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. *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 satisfied. *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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. The present request requires the sheriff's office to compile unspecified law enforcement records concerning the requestor's spouse. We find this request for unspecified law enforcement records implicates the individual at issue's right to privacy. Accordingly, to the extent the sheriff's office maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the sheriff's office must generally withhold such information under section 552.101 in conjunction with common-law privacy.

However, because the individual at issue is the requestor's spouse, the requestor may be acting as the authorized representative of this individual. Section 552.023 of the Government Code gives a person or a person's authorized representative 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 disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023*. Accordingly, if the requestor is not acting as his spouse's authorized representative, to the extent the sheriff's office maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy.² However, if the requestor is acting as his spouse's authorized representative, he has a special right of access to the compilation of his spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 in conjunction with common-law privacy. In that instance, we will address the applicability of section 552.108 of the Government Code to the requested information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the requested information pertains to an investigation that has concluded and did not result in a conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) is applicable to the requested information.

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 Publishing Co.*

²In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure.

v. *City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the sheriff's office may withhold the requested information pursuant to section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not acting as his spouse's authorized representative, to the extent the sheriff's office maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, with the exception of basic information, the sheriff's office may withhold the requested information pursuant to section 552.108(a)(2) 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 453642

Enc. Submitted documents

c: Requestor
(w/o enclosures)