



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2012

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

OR2012-08582

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# 455493.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all records related to a named individual, including two specified case numbers and information about two specified types of incidents. 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 exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information related to requested case number M-9750331. To the extent records related to case number M-9750331 existed on the date the sheriff's office received the request for information, we assume you have released them. If you have not released such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks, in part, unspecified law enforcement records involving the named individual. You argue this portion of the request seeks a compilation of the named individual's criminal history. We agree, this portion of the request requires the sheriff's office to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted an arrest report pertaining to specified case number M-9223327 (docket number 4436-95), as well as service number 96040145 and docket number 6414-95 pertaining to the two specified types of incidents. Such information does not implicate the privacy interests of the named individual. Therefore, case number M-9223327 (docket number 4436-95), service number 96040145, and docket number 6414-95 may not be withheld on the basis of section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, we address your arguments against disclosure of this information.

You raise section 552.108 of the Government Code, which provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) 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[.]

...

(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 [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Subsection 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state service number 96040145 relates to a pending case. You further state docket number 6414-95 and case number M-9223327 relate to closed cases that resulted in convictions. Upon review, we find subsections 552.108(a)(2) and 552.108(b)(2) are not applicable to case number M-9223327, service number 96040145, and docket number 6414-95 as these reports do not consist of records related to a closed case that did not result in conviction or deferred adjudication. Therefore, the sheriff's office may not withhold any portion of case number M-9223327, service number 96040145, and docket number 6414-95 under subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). Section 552.108(b)(1) protects information that, 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 state laws. *See City of Fort Worth v. Corryn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts 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). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g., Open Records Decision Nos. 531* at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of

force not protected), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). 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 raise section 552.108(b)(1) as an exception to disclosure. However, you have not quoted the exception, explained what information it excepts, and provided no arguments as to how section 552.108(b)(1) applies. Accordingly, we find you have failed to demonstrate how release of this information would interfere with law enforcement and crime prevention under section 552.108(b)(1). Therefore, the sheriff's office may not withhold any portion of case number M-9223327, service number 96040145, and docket number 6414-95 under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). The remaining information contains information related to a driver's license that is subject to section 552.130. The sheriff's office must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. You have marked a social security number the sheriff's office seeks to withhold under section 552.147. The sheriff's office may withhold the information you have marked under section 552.147 of the Government Code.¹

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information you have marked as well as the additional information we have marked under section 552.130 and may withhold the information you have marked under section 552.147 of the Government Code in case number M-9223327, service number 96040145, and docket number 6414-95. The remaining information in case number M-9223327, service number 96040145, and docket number 6414-95 must be released.

¹We note 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. Gov't Code § 552.147(b).

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,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bs

Ref: ID# 455493

Enc. Submitted documents

c: Requestor
(w/o enclosures)