



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2012

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

OR2012-10171

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# 457709.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for offense reports, arrest reports, and the disposition of all cases related to two named individuals. 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.

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 unspecified law enforcement records involving the named individuals. You argue the request seeks a compilation of the named individuals' criminal histories. We agree the request requires the sheriff's office to compile the named individuals' criminal histories and thereby implicates their privacy interests. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> We note, however, you have submitted case number 03-11230 in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate the named individuals' right to privacy. Accordingly, we address your remaining arguments against disclosure of this information.

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. Cornyn*, 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 03-11230 under section 552.108(b)(1) of the Government Code.

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<sup>1</sup>As we are able to make this determination, we do not address your arguments under sections 552.130 and 552.147 of the Government Code.

Section 552.108(b)(2) 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 . . . 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(b)(2). 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 raise section 552.108(b)(2) 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)(2) applies. Further, you indicate the case has been closed with a plea bargain for deferred adjudication. Accordingly, we find you have failed to demonstrate this information relates to a concluded criminal case that did not result in conviction or deferred adjudication. Therefore, the sheriff’s office may not withhold any portion of case number 03-11230 under section 552.108(b)(2) of the Government Code.

In summary, to the extent the sheriff’s office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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 release case number 03-11230 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,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/bs

Ref: ID# 457709

Enc. Submitted documents

c: Requestor  
(w/o enclosures)