



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2012

Ms. Jennifer K. Loftin
Royston, Rayzor, Vickery & Williams, LLP
1300 Frost Bank Building
802 North Carancahua
Corpus Christi, Texas 78401-0021

OR2012-12112

Dear Ms. Loftin:

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# 460864 (File No. 46,769).

The Jim Wells County Sheriff's Office (the "sheriff's office"), which you represent, received a request for records pertaining to sheriff's office contact with three named individuals created prior to three different dates. You state the sheriff's office does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you raise section 552.1325 of the Government Code in your initial brief, you have provided no arguments regarding the applicability of this section. Accordingly, we assume you have withdrawn this exception.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. This office has found 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). Furthermore, we find 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 three named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records depicting any of the three named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

⁴As our ruling is dispositive, we need not address your arguments against disclosure.

Ref: ID# 460864

Enc. Submitted documents

c: Requestor
(w/o enclosures)