



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2012-12248

Dear Mr. Walker:

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# 461054 (MCSD ORR# 2012-2752).

The Montgomery County Sheriff's Department (the "department") received a request for all records regarding two specified individuals from July 1, 2008 to the present. You state the department has released most of the requested information to the requestor. You state you will redact social security numbers under section 552.147(b) of the Government Code¹ and driver's license numbers under section 552.130(c) of the Government Code.² You claim a portion of the submitted information is excepted from disclosure under section 552.108 of

¹Section 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).

²Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). See Gov't Code § 552.130(c); see also *id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

the Government Code.³ We have considered the exception 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.”⁴ 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) (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). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks the department for all records regarding two named individuals, thus implicating these individuals’ right to privacy. We note, however, the requestor indicates he has a court order entitling him to access certain records, and thus, he may be an authorized representative of the individuals whose privacy interests are implicated. In that case, the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the general public to protect the individuals’ privacy. *See Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).*⁵ As we are unable to determine whether the requestor is an authorized representative of the individuals at issue, we will rule conditionally. Thus, if the requestor is not the individuals’ authorized representative, then to the extent the department maintains any information that depicts the named individuals as suspects, arrested persons, or criminal defendants, any such information must be withheld

³Although you raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn it. *See Gov’t Code §§ 552.301, 302.*

⁴The 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).*

⁵Section 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).

from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the individuals' authorized representative, then the requested information may not be withheld on privacy grounds under section 552.101. Therefore, we will consider the applicability section 552.108 of the Government Code to the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision Nos. 474 at 4-5 (1987)*. You state, and provide an affidavit from an Assistant District Attorney for Montgomery County which affirms, the information at issue relates to a pending criminal prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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*, and includes a detailed description of the offense. *See Houston Chronicle*, 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*). We note you have marked most of the narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the unmarked portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See ORD 127*. Thus, with the exception of basic information, which must include a detailed description of the offense, you may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not the authorized representative of the individuals at issue, then to the extent the department maintains any information that depicts the named individuals as suspects, arrested persons, or criminal defendants, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the individuals' authorized representative, then with the exception of basic information, which must include a detailed description of the offense, the department may withhold the information you have marked

under section 552.108(a)(1) of the Government Code. In that instance, the remaining information must be released.⁶

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 461054

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶Because the information to be released may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.