



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2012

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2012-14853

Dear Ms. Rangel:

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# 465197.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all information involving a named individual while under the influence of alcohol during a specified time period and certain domestic abuse reports during a specified time period. You state some information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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.

You claim the present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individual and thus implicates this individual's right to privacy. However, after reviewing the request and the submitted information, we find the requestor is seeking specific domestic violence reports involving the requestor and the named individual. Thus, this request does not implicate the named individual's right to privacy. Accordingly, the submitted domestic violence reports involving the named individual and the requestor may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation. In addition to the domestic violence reports, we note you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information does not constitute a compilation of the named individual's criminal history and may not be withheld under section 552.101 on that basis. Accordingly, we will address your remaining arguments against disclosure of the submitted information.

You assert the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the sheriff's office objects to the release of call slip P121730046 because it relates to a pending criminal case. You also object to the release of incident report number 12-170 because it "has been referred to the Justice Court[,] but [is] within the statute of limitations and may still be prosecuted." Based on these representations, we conclude the release of this 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). Therefore, we agree section 552.108(a)(1) is applicable to call slip P121730046 and incident report number 12-170.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert incident report numbers 06-15767 and 10-13974 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, 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 it includes a detailed description of the offense in the narrative portion of the report. Thus, with the exception of the basic front-page offense and arrest information, which must be released, the sheriff’s office may withhold call slip P121730046 and incident report number 12-170 under section 552.108(a)(1) of the Government Code and incident report numbers 06-15767 and 10-13974 under section 552.108(a)(2) of the Government Code.

We understand you to raise section 552.101 in conjunction with section 411.083 of the Government Code for the basic information. Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082 (2)(B) (definition of CHRI does not include driving record information). Upon review, we find none of the basic information consists of CHRI for purposes of chapter 411; thus, the sheriff’s office may not withhold the basic information under section 552.101 in conjunction with section 411.083 of the Government Code.

In summary, with the exception of the basic information, the sheriff's office may withhold call slip P121730046 and incident report number 12-170 under section 552.108(a)(1) of the Government Code and incident report numbers 06-15767 and 10-13974 under 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 465197

Enc. Submitted documents

c: Requestor
(w/o enclosures)