



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2012

Ms. Ann York
Records Coordinator
Cherokee County
272 Underwood Street
Rusk, Texas 75785

OR2012-20571

Dear Ms. York:

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# 474694 (Cherokee County Request No. Tullos101512).

The Cherokee County Sheriff's Office (the "sheriff's office") received a request for all records involving four named individuals and two listed addresses from January 1, 2003 through September 30, 2012. You claim that 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 representative sample of information.¹

Initially, we note the requestor seeks only information falling within certain dates. Thus, any information that falls outside these particular dates is not responsive to the request. Our ruling does not address the public availability of information that is not responsive to the request, which we have marked, and the sheriff's office is not required to release any non-responsive information.

¹We 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.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 satisfied. *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. United States 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). Furthermore, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The present request seeks any information concerning the four named individuals for a specified time period. We find this request for unspecified law enforcement records implicates these individuals’ right to privacy. Therefore, to the extent the sheriff’s office maintains law enforcement records depicting the 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. We note, however, you have submitted information in which the named individuals are not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate the individuals’ right to privacy. Accordingly, we will address your remaining argument for this information.

Section 552.108 of the Government Code 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the 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)(1), (2). We note the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Subsection 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while subsection 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. A governmental body claiming subsection 552.108(a)(1) 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). A governmental body that claims subsection 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You state not all of the reports at issue have been concluded. You further state some reports are waiting for trial and some are inactive. Upon review, we find you have not specified which of the reports at issue are pending and which are closed. Thus, we find you have failed to demonstrate the applicability of section 552.108 to this information. *See id.* § 552.301(e)(1)(A), .301(e)(2) (governmental body must label information to indicate which exceptions apply to which parts of information). Accordingly, the sheriff's office may not withhold any of the information at issue under section 552.108 of the Government Code.

We note the information at issue contains information subject to section 552.130 of the Government Code.² Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1)-(2). Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office maintains law enforcement records depicting the 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. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/eb

Ref: ID# 474694

Enc. Submitted documents

c: Requestor
(w/o enclosures)