



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2013

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2013-02734

Dear Ms. Clarke:

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# 479160.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for a named individual's jail card. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we must address the sheriff's office's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the sheriff's office received the request for information on November 14, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline for requesting a ruling from this office was November 30, 2012. However, the envelope in which the sheriff's office requested a ruling from this office bears a metermark of December 7, 2012. Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You assert section 552.101 of the Government Code. Because section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the requested information.

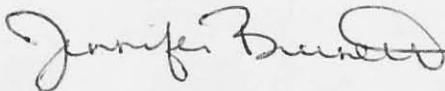
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains 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 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. 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). 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 named individual. We find this request for unspecified law enforcement records implicates the named individual's rights to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script, reading "Jennifer Burnett", followed by a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 479160

Enc. Submitted documents

c: Requestor
(w/o enclosures)