



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2013

Ms. Sue Korioth
Assistant District Attorney
Kaufman County Criminal District Attorney
100 West Mulberry
Kaufman, Texas 75142

OR2013-10783

Dear Ms. Korioth:

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# 491186.

The Kaufman County Sheriff's Office (the "sheriff's office") received three requests for information. The first request for information seeks all information pertaining to a named individual. The second request seeks the mugshot photo and all arrest information pertaining to the named individual, including information related to a specified arrest. The third request seeks all unsealed affidavits, warrants, and reports pertaining to individuals involved in a specified incident, including information on the named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant requests for information because it pertains to an incident involving the named individual after the sheriff's office received the instant requests for information.

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Further, Exhibit 4, submitted to this office with a letter dated April 16, 2013, is only responsive to the third request for information. This ruling does not address the public availability of any information that is not responsive to a request and the sheriff's office is not required to release such information in response to the requests at issue.

Next, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the sheriff's office received the first and second requests for information on April 2, 2013, and the third request for information on April 4, 2013. Although the sheriff's office timely submitted some of the responsive information on April 16, 2013, we note the sheriff's office submitted additional responsive information on June 20, 2013 ("Exhibits A and B"). *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301(e) of the Government Code with respect to Exhibits A and B submitted on June 20, 2013.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Although the sheriff's office claims section 552.108 of the Government Code for the information at issue, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). However, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* Open Records Decision No. 586 at 3 (1991). You inform us the Kaufman County

District Attorney's Office (the "district attorney's office") objects to the release of the information at issue. Thus, we will consider whether the sheriff's office may withhold that information under section 552.108 on behalf of the district attorney's office. Further, as sections 552.101 and 552.152 of the Government Code can provide compelling reasons to overcome the presumption of section 552.302, we will address the applicability of these exceptions to Exhibits A and B. We will also consider your arguments against release of the timely-submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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) (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 requests, in part, seek all records pertaining to a named individual. These requests require the sheriff's office to compile the named individual's criminal history and implicate the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note you have submitted information, which we have marked, that pertains to the incident specified by the second requestor. The second request for information does not implicate the privacy interest of the named individual with regard to the specified incident. Accordingly, the marked information may not be withheld from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Further, Exhibit 4 does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code under common-law privacy as a criminal history compilation.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 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). You state the remaining responsive information pertains to an active criminal investigation. Based on your representation, we conclude the release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the remaining responsive information.

However, we note, and 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the sheriff’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.²

You seek to withhold the basic information under section 552.152 of the Government Code, which provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.152. You state release of the information at issue would subject surviving members of the district attorney’s office and other county employees to a substantial risk of harm. Upon review, however, we find you have failed to demonstrate release of any of the basic information would subject any employee or officer to a substantial threat of harm. Therefore, the sheriff’s office may not withhold any of the basic information under section 552.152 of the Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, with the exception of the information we have marked otherwise, to the extent the sheriff's office maintains law enforcement records listing the named individual 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. With the exception of basic information, the sheriff's office may withhold the remaining responsive information under section 552.108(a)(1) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 491186

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)