



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2013

Mr. Stuart Hughes and Ms. Aimie Kemp
Montgomery County Attorney's Office
207 West Phillips, Suite # 100
Conroe, Texas 77301

OR2013-11413

Dear Mr. Hughes and Ms. Kemp:

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# 492202 (County ORR# 2013-2114).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all reports and records involving the requestor's client or another named individual.¹ You state the sheriff's office has released some of the requested information. You also state the sheriff's office will redact social security numbers under section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note the sheriff's office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Section 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. Gov't Code § 552.147(b).

Section 552.101 of the Government Code exempts 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) (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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

You assert the present request, in part, requires the sheriff’s office to compile unspecified law enforcement records concerning the named individual who is not the requestor’s client. Therefore, to the extent the sheriff’s office maintains law enforcement records depicting the named individual other than the requestor’s client as a suspect, arrestee, or criminal defendant, the sheriff’s office must withhold any such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information that does not depict the named individual who is not the requestor’s client as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 on that basis. Therefore, we will address your remaining arguments against the disclosure of this information.

We note some of the information at issue consists of court-filed documents that are subject to section 552.022 of the Government Code, which provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov’t Code § 552.022(a)(17). The court-filed documents at issue are subject to section 552.022(a)(17) and must be released unless they are confidential under the Act or

other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the sheriff's office may not withhold the information subject to section 552.022 under section 552.108. As you raise no further exceptions to disclosure for the information subject to section 552.022, which we have marked, it must be released. We will address your arguments under sections 552.108 and 552.130 for the remaining information that is not subject to section 552.022.

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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 information pertaining to report number 12A011952 relates to a criminal case that is pending prosecution by the Montgomery County District Attorney’s Office (the “district attorney’s office”). Additionally, you have submitted supporting documentation from the district attorney’s office stating it objects to release of this information on the basis of the pending prosecution. Based upon these representations and our review, we conclude 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 information at issue.

As you acknowledge, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, which you state has been released, the sheriff’s office may withhold the information pertaining to report number 12A011952 that is not subject to section 552.022 under section 552.108(a)(1).

You state the sheriff's office will withhold driver's license information pursuant to subsection 552.130(c) of the Government Code.³ Section 552.130 provides, in pertinent part, information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We note, however, the remaining information includes the requestor's client's driver's license information. The requestor has a right of access to her client's driver's license information under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the sheriff's office may not withhold the requestor's client's driver's license information under section 552.130. The sheriff's office must withhold the information we have marked, which does not pertain to the requestor's client, under section 552.130(a)(1).

In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individual other than the requestor's client 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. With the exception of the basic information, the sheriff's office may withhold the information pertaining to report number 12A011952 that is not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.130(a)(1) of the Government Code. The sheriff's office must release the remaining information.⁴

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/>

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

⁴We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the sheriff's office receives another request for this information from an individual other than this requestor or her client, the sheriff's office must again seek a ruling from this office.

[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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 492202

Enc. Submitted documents

c: Requestor
(w/o enclosures)