



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2013

Mr. Jorge L. Trevino, Jr.
Assistant County Attorney
Webb County
1110 Washington Street, Suite 301
Laredo, Texas 78040

OR2013-22199

Dear Mr. Trevino:

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# 509335.

Webb County (the "county") received a request for "all arrest records, criminal complaints, [and] investigative reports" related to a named county commissioner, including "information on Indecent Exposure [and] family violence[.]" You state the county has destroyed some of the requested information pursuant to its records retention and indicate the county has no information related to the portion of the request for records pertaining to family violence.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. You have notified the named individual of the request for information pursuant to section 552.304 of the Government Code. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 552.304.

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received or to obtain information not in its possession. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 558 (1990), 499 (1988), 452 at 3 (1986).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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. We note, 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.

The present request, in part, requires the county to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual’s right to privacy. However, the requestor also is seeking a specific report. This portion of the request does not implicate the named individual’s right to privacy. Accordingly, the specifically requested report may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation. However, to the extent the county maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the county must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We will address your remaining arguments against disclosure of the submitted specifically requested report.

Section 552.108 of the Government Code exempts 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You state the information at issue relates to a concluded investigation which did not result in conviction or deferred adjudication. You have provided a letter from the District Attorney's Office for the 49th Judicial District in support of your representation. Based on these representations and our review, we find the county has demonstrated the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the county may withhold the information we have marked under section 552.108(a)(2) of the Government Code.²

We understand you to claim the basic information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Determinations under common-law privacy must be made on a case-by-case basis. *See* Open Records Decision No. 373 at 4(1983); *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case).

Upon review, we find you have failed to demonstrate any of the basic information is private. Accordingly, the county may not withhold the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

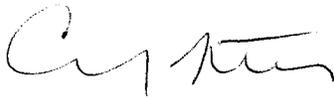
In summary, to the extent the county maintains law enforcement records, other than the specifically requested report, depicting the named individual as a suspect, arrestee, or criminal defendant, the county must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information that must be released, the county may withhold the information we have marked under section 552.108(a)(2) of the Government Code.

²Because we make this determination, we do not address your remaining claims for this information.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 509335

Enc. Submitted documents

c: Requestor
(w/o enclosures)