



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2014

Mr. Paul J. Stewart  
Assistant County Attorney  
County of Fort Bend  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2014-01917

Dear Mr. Stewart:

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# 512793.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports and records concerning two named individuals, including two specified cases. You indicate the two specified cases are civil matters and the sheriff's office does not maintain information concerning those cases.<sup>1</sup> You state the sheriff's office has released some of the remaining information. 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.

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 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

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

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 courthouses 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. Upon review, we find this request requires the sheriff's office to compile unspecified criminal history records concerning the named individuals. Therefore, to the extent the sheriff's office maintains law enforcement records depicting either of the named individuals 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, however, you have submitted records that do not list either of the named individuals as a suspect, arrestee, or criminal defendant. This information does not require the sheriff's office to compile unspecified criminal history records and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider your remaining arguments against the disclosure of this information.

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 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 reports 12-32517 and 12-34167 relate to active criminal investigations and release of those reports would interfere with the detection, investigation, and 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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to reports 12-32517 and 12-34167.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state reports 11-8772, 12-25983, and 12-27970 relate to investigations that have concluded and did not result in a conviction or deferred adjudication. Based on these representations, we conclude section 552.108(a)(2) of the Government Code is applicable to reports 11-8772, 12-25983, and 12-27970.

We note, however, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information does not include motor vehicle record information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff's office may withhold reports 12-32517 and 12-34167 under section 552.108(a)(1) of the Government Code and reports 11-8772, 12-25983, and 12-27970 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the sheriff's office maintains law enforcement records depicting either of the named individuals 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. With the exception of basic information, the sheriff's office may withhold reports 12-32517 and 12-34167 under section 552.108(a)(1) of the Government Code and reports 11-8772, 12-25983, and 12-27970 under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we need not address your remaining argument.

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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/som

Ref: ID# 512793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)