



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2005

Mr. David K. Walker  
County Attorney  
Montgomery County Attorney's Office  
207 West Phillips  
Conroe, Texas 77301

OR2005-10300

Dear Mr. Walker:

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# 236358.

The Montgomery County Sheriff's Office (the "sheriff") received a request for information pertaining to a named individual and two specified addresses. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a specific individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

In this instance, the request is for unspecified records involving a named individual, and for two street addresses. The request implicates the named individual's right to privacy. Therefore, to the extent that the sheriff maintains any unspecified records that relate to the

named individual as a possible criminal suspect, arrested person, or defendant and do not involve any of the listed street addresses, any such records are protected by common law privacy under *Reporters Committee* and must be withheld under section 552.101. We note that information that relates to an individual only as a complainant, witness, or other involved person, and not as a possible suspect, arrested person, or defendant, as well as information that involves the listed street addresses, is not protected by common law privacy under *Reporters Committee* and may not be withheld on that basis under section 552.101.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. You assert that the information at issue pertains to investigations that concluded in a result other than conviction or deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to the information at issue.

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information under section 552.108(c) includes a detailed description of the offense. See *id.*

You argue that basic information about the responsive incidents is excepted from disclosure under section 552.101 in conjunction with common law privacy on the basis of the holding in *Industrial Foundation*. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

In this instance, some of the information that would ordinarily be public under section 552.108(c) is protected by common law privacy under section 552.101. See Gov't Code § 552.101; *Indus. Found.*, 540 S.W.2d at 668. We have marked the type of private information that must be withheld from the public under section 552.101. Upon review of the remaining basic information, however, we find that none of the remaining basic information is highly intimate or embarrassing. Accordingly, we conclude that the sheriff may not withhold any of the remaining basic information under section 552.101 in conjunction with common law privacy.

In summary, to the extent that the sheriff maintains any unspecified records that relate to the named individual as a possible criminal suspect, arrested person, or defendant and do not involve any of the listed street addresses, any such records are protected by common law privacy under *Reporters Committee* and must be withheld under section 552.101. With the exception of basic information, the sheriff may withhold the information at issue under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff must withhold the type of information we have marked that is protected by common law privacy under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jpa

Ref: ID# 236358

Enc. Submitted documents

c: Ms. Karen Hipp  
16902 Glenheath  
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(w/o enclosures)