



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County Attorney's Office
P. O. Box 1748
Austin, Texas 78767

OR2006-11825

Dear Ms. Joe:

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#261637.

The Travis County Sheriff's office (the "sheriff's office") received a request for "all booking sheets and incident reports" on a named individual over a specified period of time. You claim that the submitted 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.

Initially, we note that some of the submitted information is not responsive to the present request, which seeks records pertaining to a named individual during a specific time period. This information, which we have marked, either does not involve the named individual or falls outside of the specified time frame and is thus not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office is not required to release that information in response to the request.

We now turn to your argument against disclosure under section 552.101 of the Government Code. 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 of the Government Code encompasses the doctrine

of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 satisfied. *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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, to the extent the sheriff's office maintains law enforcement records depicting 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.

Next, we address your argument against disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (c). A governmental body claiming section 552.108(a)(1) of the Government Code must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) of the Government Code must

demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You state that some of the submitted information you have marked relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of that portion of the submitted information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You also state that some of the submitted information you have marked pertains to criminal investigations that concluded in results other than conviction or deferred adjudication. Based on this representation and our review, we agree that section 552.108(a)(2) of the Government Code is applicable to this portion of the submitted information.

However, section 552.108 of the Government Code 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*. Thus, with the exception of basic front page offense and arrest information, the sheriff's office may withhold the portions of the submitted information you have marked under sections 552.108(a)(1) and (a)(2) of the Government Code, respectively. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. *Id.* § 552.007.

In summary, the sheriff's office is not required to release the information we have marked as not responsive to the request for information. To the extent the sheriff's office maintains law enforcement records depicting 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 marked portions of the submitted information pursuant to section 552.108 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 261637

Enc. Submitted documents

c: Ms. Margo Ahern Fox
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(w/o enclosures)