



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2006

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2006-13988

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# 265563.

The Montgomery County Sheriff's Department (the "department") received a request for reports during the last three years, including one specific report, made by the requestor against her husband. 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.

Initially, we note that some of the submitted information is not responsive to the instant request for reports made by the requestor against her husband. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

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. This section encompasses information made confidential by other statutes. Common-law privacy 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 demonstrated. *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. United States 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. In this instance, the request is for specific records made by the requestor against her husband, rather than an unspecified compilation of a named person's criminal history. Thus, we find that the request does not require the department to compile the individual's criminal history. Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code on this basis.

Section 552.108 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Offense Report No. 05A008367 relates to an "active criminal investigation." Based on this representation, we conclude that the release of this 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*, including the identification and description of the complainant. Open Records Decision No. 127 (1976). Information tending to identify a sexual assault victim is generally private information that must be withheld. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). Here, however, the requestor is the complainant, and therefore has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise private. Gov't Code § 552.023 (person has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Thus, with the exception of the basic information which must be released, the department may withhold the information in Offense Report No. 05A008367 under section 552.108(a)(1).

We note, however, that some of the remaining submitted information is subject to sections 552.130 and 552.147 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. In accordance with section 552.130, the department must withhold the driver's license number we have marked.

Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. In accordance with section 552.147, the department must withhold the social security number we have marked.

In summary, with the exception of basic information, the department may withhold the information in Offense Report No. 05A008367 under section 552.108(a)(1) of the Government Code. The driver's license number and social security number which we have marked must be withheld pursuant to sections 552.130 and 552.147 respectively. The remaining information must be released to the requestor.²

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).

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Along with the information relating to the requestor that would be protected from public disclosure by common-law privacy, the submitted documents also contain the requestor's Texas driver's license and social security numbers. Because sections 552.130 and 552.147 also protect personal privacy, the requestor also has a right of access to her own Texas driver's license and social security numbers under section 552.023. Should the department receive another request for these same documents from a person who would not have a right of access to this requestor's private information, the department should resubmit these documents and request another ruling. *See* Gov't Code §§ 552.301, .302.

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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/krl

Ref: ID# 265563

Enc. Submitted documents

c: Ms. Maria A. Cardenas
9910 Bassoon Drive
Houston, Texas 77025
(w/o enclosures)