



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 16, 2008

Ms. Laura Garza Jimenez  
County Attorney  
Nueces County Courthouse  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2008-00802

Dear Ms. Jimenez:

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# 299700.

The Nueces County Sheriff's Department (the "department") received a request for all records pertaining to a specified individual. You claim that the requested information is exempted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that the Act does not require you to conduct legal research. We agree that the Act does not require a governmental body to perform legal research. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the information at issue is not independent legal research conducted because of the instant request, but rather part of the responsive information already held by the department. Accordingly, we will address your arguments under the Act for this information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. 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 any records regarding a named individual. This request for unspecified law enforcement records requires the department to compile the named individual's criminal history. Therefore, to the extent that the department maintains any law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov't Code* § 411.082(2)(B). We note that you have submitted information related to routine traffic violations. The department may not withhold information relating to the routine traffic violations on this basis. Furthermore, we note that you have submitted some law enforcement records in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information also is not protected by common-law privacy and may not be withheld under section 552.101 on that basis.

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). Generally, a governmental body claiming section 552.108(a)(1) 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 indicate that case number 0709150037 relates to an ongoing criminal investigation and potential prosecution. Based upon your representation, we find that section 552.108(a)(1) is applicable to case number 0709150037. *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) (per curiam) (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*. *See* 536 S.W.2d 559 (Tex. 1976);

Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Basic information under section 552.108(c) includes the identity of the complainant. *See* ORD 127 at 3-4. The information at issue relates to a sexual assault. The identity of a victim of sexual assault is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 393 (1983) (information tending to identify sexual assault victims must be withheld pursuant to common-law privacy). Thus, the department must withhold the identity of the complainant in the basic information, which we have marked, under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the remaining basic information, the department may withhold case number 0709150037 under section 552.108(a)(1). However, the department has failed to demonstrate the applicability of section 552.108(a)(1) to case numbers 04-006304, 04-006327, and 01-073859 and they may not be withheld on this basis.

Next, you assert that case numbers 04-006304, 04-006327, and 01-073859 are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). This office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). We find that you have not demonstrated how or why the release of the information in case numbers 04-006304, 04-006327, and 01-073859 would interfere with law enforcement and crime prevention. Accordingly, we conclude that the department may not withhold any portion of case numbers 04-006304, 04-006327, and 01-073859 under section 552.108(b)(1) of the Government Code.

Next, section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information and the driver's license information we have marked under section 552.130.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The department may withhold the social security numbers you have marked under section 552.147.<sup>1</sup>

In summary, to the extent that the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked in case number 0709150037 under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold the remaining information in case number 0709150037 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle and driver’s license information we have marked under section 552.130 of the Government Code. The department may withhold the the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.<sup>2</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

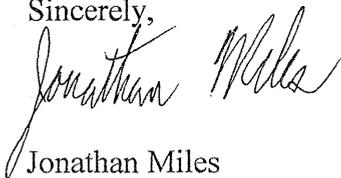
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 299700

Enc. Submitted documents

c: Mr. Thomas J. Henry  
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(w/o enclosures)