



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2008

Ms. Dylbia L. Jefferies Vega
Cameron County Commissioners Court
Civil Legal Division
964 East Harrison Street
Brownsville, Texas 78520

OR2008-06818

Dear Ms. Vega:

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# 310320.

The Cameron County Sheriff's Department (the "sheriff") received a request for police reports in which a named individual appears as a suspect or witness to a crime. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. This exception 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. *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

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

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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the request for unspecified law enforcement records of the named individual requires the sheriff to compile the named individual's criminal history. Therefore, to the extent that the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, such information is confidential under section 552.101 in conjunction with common-law privacy. We note that you have submitted records in which the named individual is not listed as a suspect, arrestee, or criminal defendant. Accordingly, we will address your arguments under section 552.108 of the Government Code for that information.

Section 552.108(a)(2) of the Government Code exempts 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 has concluded in a final result other than a conviction or deferred adjudication. You indicate that some of the submitted information pertains to cases that concluded in a final result other than conviction or deferred adjudication. We note, however, that the submitted information contains numerous case reports, and you have failed to identify which of the submitted cases concluded in such a result. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Consequently, you have failed to establish the applicability of section 552.108(a)(2) of the Government Code and none of the submitted information may be withheld on this basis.

We note that you have submitted an incident report that pertains to the named individual, but does not list him as a suspect, arrestee, or criminal defendant. This report contains medical information that is excepted from disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Accordingly, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 exempts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the sheriff must withhold the Texas driver's license number we have marked.

In summary, to the extent that the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must also withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code. The remaining information must be released.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 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 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).

²We note that the information being released contains a social security number. 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.

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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 310320

Enc. Submitted documents

c: Mr. Jose Bajon
Brownsville Herald
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(w/o enclosures)