



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2009

Mr. Charles C. Dickerson  
Special Assistant District Attorney  
Criminal District Attorney, Panola County  
Panola County Judicial Center #301  
108 South Sycamore  
Carthage, Texas 75633

OR2009-05816

Dear Mr. Dickerson:

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# 341563.

The Criminal District Attorney of Panola County (the "district attorney") received a request for a copy of any records pertaining to a named individual that the district attorney may have. You claim that the submitted information is excepted 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.

Section 552.101 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 the common-law right to 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 prongs of this test must be met. *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. In this instance, the requestor asks the district attorney for unspecified law enforcement records pertaining to a named individual, thus implicating the individual's right to privacy. Therefore, to the extent the district attorney maintains law enforcement records

depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 against disclosure of this information. Section 552.101 of the Government Code also encompasses information made confidential by other statutes. You contend that portions of the submitted information are confidential under article 20.02 as grand jury evidence. Article 20.02(a) provides that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define “proceedings” for purposes of subsection (a). However, when construing article 20.02 of the Code of Criminal Procedure, the types of “proceedings” Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.); *see also Stern v. State*, 869 S.W.2d 614, 621 (Tex. App.—Houston [14th Dist] 1994, writ denied) (stating that anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret); *In re Grand Jury Matter*, 682 F.2d 61, 64 (3rd Cir. 1982) (Third Circuit Court of Appeals explained that disclosure of information obtained by governmental body during its independent investigation that is later presented to grand jury does not violate rule 6(e)). The court in *Stern* stated, “The requirement of secrecy should be imposed only to the extent that it contributes to the effectiveness of the grand jury as that institution carries out its investigative and screening functions.” *Id.* 869 S.W.2d at 623.

You state that the present request is broad enough to include grand jury evidence. However, you have not explained how the information you have marked as subject to article 20.02 falls into the categories of information that Texas courts have construed as “proceedings” for the purposes of article 20.02 of the Code of Criminal Procedure. Also, we note that information may not be withheld simply because the grand jury considered the information. *See Open Records Decision No. 513 at 4 (1988)*. Therefore, we determine that the district attorney may not withhold the information at issue under section 552.101 in conjunction with article 20.02 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses article 39.14 of the Code of Criminal Procedure. You contend that portions of the submitted information are confidential under article 39.14 of the Code of Criminal Procedure. However, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential for section 552.101 purposes. *See Open Records Decision Nos. 658 at 4 (1998)* (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure); 478 at 2-3 (1987). Consequently, we conclude that the district attorney may not withhold the information at issue pursuant to section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure.

Next we will address your argument under section 552.108 of the Government Code, which provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Id.* 873 S.W.2d at 380. As we understand your argument, you contend that the instant request for information essentially encompasses the district attorney's entire case file concerning the named individual. You assert that the information at issue reflects the mental impressions or legal reasoning of an attorney representing the state. Based on these representations and our review, we agree that section 552.108(a)(4) of the Government Code is generally applicable to the information at issue.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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); *see* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the

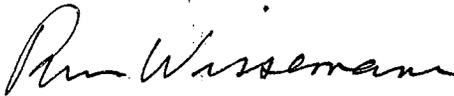
exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.<sup>1</sup>

In summary, to the extent the district attorney 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. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108 of the Government Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 341563

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note that basic information includes the arrestee's social security number. See Open Records Decision No. 127 (1976). 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.