



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 2, 2009

Ms. Cinty Weir-Nutter  
Ector County Attorney  
300 Nl. Grant, Room. 201  
Odessa, Texas 79761

OR2009-07521

Dear Ms. Nutter:

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# 344812.

The Ector County Detention Center (the "center") received a request for arrest information pertaining to eleven named individuals. You indicate that the center does not have some of the requested information. You also inform us that some information has been provided to the requestor, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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." Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (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. *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*

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<sup>1</sup>Although you also raise section 552.108 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you no longer assert this exception. See Gov't Code §§ 552.301, 552.302.

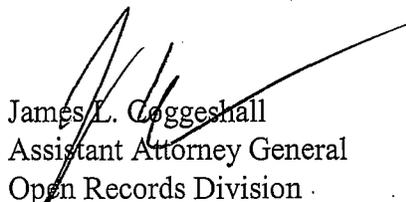
*Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in 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.

The requestor is a mitigation specialist for the West Texas Regional Public Defender for Capital Cases, which the requestor states is "a public defender's office appointed to represent indigent defendants." Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The request is for information pertaining to eleven named individuals, some of whom appear to be indigent. Thus, to the extent the requestor is the authorized representative of any of the named individuals, the department may not withhold any information regarding that named individual under section 552.101 in conjunction with common-law privacy, but instead must release it to the requestor pursuant to section 552.023. However, to the extent the requestor is not the authorized representative of one of the named individuals, the center must withhold any information depicting that named individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy.

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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cc

Ref: ID# 344182

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)