



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2009

Ms. M. Ann Montgomery
Assistant County and District Attorney
Ellis County and District Attorney's Office
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2009-09612

Dear Ms. Montgomery:

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# 348884.

The Ellis County Sheriff's Department (the "sheriff") received a request for "[a]ll records from 12-14-08 to present." You inform us that the sheriff understands the requestor to be seeking all records involving herself as complainant or a named person as defendant. 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 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. 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

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.101, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

test must be established. *See 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request has two components: (1) reports in which the requestor is the complainant, and (2) reports in which the named person is the defendant. In part, this request requires the sheriff to compile unspecified police records involving the named individual as a defendant. Therefore, to the extent the sheriff maintains reports in which the named person is the defendant, but the requestor is not the complainant, the sheriff must withhold such reports in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We will address your arguments against disclosure for the remaining requested information, which consists of reports in which the requestor is the complainant, including such reports in which the named person is the defendant.

Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the remaining reports at issue each relate to a criminal case that has concluded in a final result other than conviction or deferred adjudication. Based on this representation and our review, we agree that the sheriff may withhold the portions of these reports that you have marked under section 552.108(a)(2).

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [.]" Gov't Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas driver's license numbers you have marked pursuant to section 552.130.

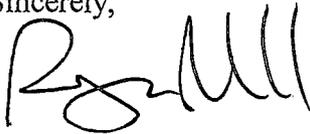
In summary: (1) to the extent the sheriff maintains reports in which the named person is the defendant, but the requestor is not the complainant, the sheriff must withhold such reports in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the sheriff may withhold the portions of the remaining reports at

issue that you have marked under section 552.108(a)(2) of the Government Code; and (3) the sheriff must withhold the Texas driver's license numbers you have marked pursuant to section 552.130 of the Government Code. As you raise no further exceptions against disclosure, the sheriff must release the remainder of the submitted information.²

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, 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 348884

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note that the information to be released contains confidential information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). However, because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from an individual other than this requestor, the sheriff must again seek a ruling from this office.