



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2009

Ms. Michelle Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-09796

Dear Ms. Rangel:

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# 349012.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for a specified police report and any police reports pertaining to the requestor and a named individual at a specified address. You state that the sheriff has released some of the requested information. You claim portions of the submitted information are 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.¹

Section 552.101 of the Government Code excepts from public 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 (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

common-law privacy, both prongs of this test must be demonstrated. *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 request is for any records held by the sheriff regarding the requestor, a named individual, and a specified address, but also specifically includes report number 08-22728. Thus, we agree with your contention that the request, in part, requires the sheriff to compile the named individual's criminal history. However, you have only submitted information pertaining to report number 08-22728, which was specified in the request, and an incident history detail on a false alarm at the specified address. We find the release of the submitted information does not implicate the privacy interests of the named individual. Accordingly, the sheriff may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Next, we address your claim that portions of report number 08-22728 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 08-22728 pertains to a criminal investigation by the sheriff that has been concluded and that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to report number 08-22728.

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 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). Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the sheriff may withhold report number 08-22728 under section 552.108(a)(2).² As our ruling with respect to report number

²We note that you have the discretion to release all or part of the remaining information in report number 08-22728 that is not otherwise confidential by law. Gov't Code § 552.007.

08-22728 is dispositive, we need not address your remaining arguments against its disclosure.

Next, you claim that some of the remaining information consists of criminal history record information ("CHRI") confidential under chapter 411 of the Government Code. Section 552.101 also encompasses CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we find the remaining information does not contain CHRI for purposes of chapter 411. Thus, no portion of the remaining information is confidential under chapter 411. Consequently, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

However, we note that the remaining information contains personal financial information that is confidential under common-law privacy. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we conclude that the personal financial information we have marked is intimate and embarrassing and of no legitimate public interest. Accordingly, the sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, we have marked Texas motor vehicle record information in the submitted information that the sheriff must withhold under section 552.130 of the Government Code.

Section 552.147 of the Government Code states that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ *Id.* § 552.147. Upon review, we agree the sheriff may withhold the social security number in remaining information under section 552.147 of the Government Code.

In summary, with the exception of basic information, which you state has been released, the sheriff may withhold report number 08-22728 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The sheriff may withhold the social security number in the remaining information under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

³Section 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. Gov't Code § 552.147(b).

Ref: ID# 349012

Enc. Submitted documents

c: Requestor
(w/o enclosures)