



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 14, 2009

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2009-11409

Dear Ms. Lentz:

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# 352158.

The Williamson County Sheriff's Office (the "sheriff") received a request for information regarding a specified criminal investigation conducted by the sheriff. We understand you to claim some of the submitted information is not subject to the Act. You claim the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the requestor has excluded social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers from her request. Therefore, such information within the submitted documents is not responsive to the present request. The sheriff need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we address the sheriff's assertion that the submitted grand jury subpoenas and financial records obtained pursuant to those subpoenas are records of the judiciary and therefore not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body," but the judiciary is expressly excluded from the requirements of the Act. *See Gov't Code § 552.003(1)(B)*. This office has determined a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decision Nos. 513 (1988), 411

(1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the submitted subpoena and financial records are in the custody of the sheriff as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. This decision does not address the public availability of such information. However, to the extent this information is not in the custody of the sheriff as an agent for the grand jury, we will address your exceptions to disclosure.

We next note the submitted information involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses . . . the identifying information of another person without the other person's consent[.]" Penal Code § 32.51(b). For purposes of section 32.51, "identifying information" includes an individual's financial institution account number. *Id.* § 32.51(a)(1)(A), (C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides as follows:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005 if no "element of the offense occurs before that date." Act of June 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885. In this instance,

the submitted report pertains to a forgery, which constitutes an alleged violation of section 32.51. We note the requestor is the wife of the victim. Thus, the requestor may be the authorized representative of the victim identified in the report. The alleged offense occurred after September 1, 2005. Because we are unable to determine based on the information provided whether the requestor is the representative of the victim, we must rule conditionally. If the requestor is the authorized representative of the victim, the submitted information is subject to article 2.29 and must be released to the requestor except to the extent it contains confidential information. You seek to withhold the submitted information under section 552.108 of the Government Code. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, section 552.108 is not applicable to information subject to article 2.29. However, the submitted report contains information subject to sections 552.101, 552.130 and 552.136 of the Government Code. As these sections are confidentiality provisions, we will address their applicability to 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.” Gov’t Code § 552.101. You claim portions of the submitted information are subject to article 20.02 of the Code of Criminal Procedure. Section 552.101 encompasses article 20.02. Article 20.02(a) provides that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). 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. *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 (Tex. App.—Houston [14th Dist] 1994, no writ) (stating that anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret). Upon review, we conclude you have not demonstrated, and we are unable to determine, how the information you have marked reveals grand jury testimony or deliberations of the grand jury. Accordingly, the sheriff may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure.

Section 552.101 also encompasses chapter 411 of the Government Code. Chapter 411 deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or the Texas Crime Information Center. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 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 a portion of the submitted information is CHRI that is confidential under section 411.083. Thus, the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code. However, you have not demonstrated the remaining information at issue constitutes CHRI for purposes of section 411.083. Accordingly, no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses chapter 560 of the Government Code, which governs the public availability of fingerprints. Section 560.001 defines "biometric identifier," for the purposes of these sections, as meaning "a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." *Id.* § 560.001(1). Section 560.002 provides a governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than [the Act]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

*Id.* § 560.002. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. As there is no indication that the requestor would have a right of access under section 560.002 to the fingerprints you have marked, the sheriff must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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 addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). Upon review, we conclude the information we have marked is intimate or embarrassing and of no legitimate public interest. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

~~Section 552.101 also encompasses information that is made confidential under the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).~~

This office has applied privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976), as authority, this office held that those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure." This office ruled this right would be violated by the release of information that identifies those correspondents because such a release would discourage correspondence. *See* ORD 185. The information at issue in this ruling was the identities of individuals who had corresponded with inmates. In Open Records Decision No. 185, our office found that "the public's right to obtain an inmate's correspondence list is not sufficient to overcome the first amendment right of the inmate's correspondents to maintain communication with him free of the threat of public exposure." *Id.* Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be

threatened if their names were released. ORD 430. Further, we recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See also* ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Upon review, we find the sheriff must withhold the inmate visitor information we have marked under section 552.101 in conjunction with constitutional privacy. We note although the requestor may be the authorized representative of one of the inmates whose visitor information is at issue, the requestor does not have a right of access to this information under section 552.023 of the Government Code because the constitutional rights of the other parties are also implicated.<sup>1</sup> *See* ORD 430.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that must be withheld under section 552.130 of the Government Code.

Section 552.136 states in part that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The submitted information also includes credit card and bank account numbers. We note most of the numbers you have marked under section 552.136 belong to the victim. Section 552.136 protects personal privacy. Therefore, if the requestor is the authorized representative of the victim, she has a right of access to the credit card and bank account information belonging to the victim. Gov't Code § 552.023(a); ORD 481 at 4. Thus, the sheriff must withhold the account information not belonging to the victim, which we have marked, under section 552.136 of the Government Code. The sheriff may not withhold the remaining information at issue under section 552.136 of the Government Code.

In the event that the requestor is not acting as the victim's authorized representative, then the submitted information is not subject to article 2.29 of the Code of Criminal Procedure and we will consider your claim against disclosure under section 552.108 of the Government Code. However, we must first note the submitted information includes criminal complaints that have been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed information, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived.

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<sup>1</sup>Section 552.023(a) of the Government Code states a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a).

*See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the sheriff may not withhold the complaints we have marked under section 552.108 of the Government Code. As you raise no further exceptions for the marked complaints that are subject to section 552.022(a)(17), they must be released. We will, however, consider your claim under section 552.108 for the information that is not subject to section 552.022.

Section 552.108 provides in pertinent part as follows:

(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:

(2) it is information that the 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 state the information you have marked pertains to a criminal investigation by the sheriff that has been concluded with no charges being brought. Thus, you contend this investigation did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to the information you have marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 and the information subject to section 552.022, if the requestor is not acting as the authorized representative of the victim, the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is the authorized representative of the victim, the submitted information is subject to article 2.29 of the Code of Criminal Procedure, and must be released to the requestor, except the sheriff must withhold (1) the CHRI we have marked

under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (3) the private information we have marked under section 552.101 in conjunction with common-law privacy; (4) the inmate correspondence and visitor information under section 552.101 of the Government Code in conjunction with constitutional privacy; (5) the Texas driver's license information we have marked under section 552.130 of the Government Code, and (6) the credit card and bank account numbers we have marked under section 552.136 of the Government Code. If the requestor is not the authorized representative of the victim, the submitted information is not subject to article 2.29 of the Code of Criminal Procedure, and with the exception of basic information and the marked information subject to section 552.022(a)(17) of the Government Code, the sheriff may withhold the information it has marked under section 552.108(a)(2) of the Government Code and must withhold the information we have marked under section 552.136 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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/cc

Ref: ID# 352158

Enc. Submitted documents

c: Requestor  
(w/o enclosures)