



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

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

OR2009-14023

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# 359174.

The Ellis County Sheriff's Office (the "sheriff") received a request for a police call history list and all incident and police reports for a specific address from June 2001 to the date of the request. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 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" and encompasses information that another statute makes confidential. Gov't Code § 552.101. Section 552.101 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 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. United States 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. Here, you claim that the requestor is asking the sheriff to compile a criminal history. We note, however, that the present request is for police and incident reports pertaining to a specific location. The requestor does not seek a compilation of information for any specific individual. Therefore, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code as a compilation of an individual's criminal history.

You also contend the submitted documents contain medical information which is confidential on the basis of common-law privacy. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* also 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. 540 S.W.2d at 683. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under 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 find a portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information you have marked under section 552.101 is not highly intimate or embarrassing information of no legitimate public concern. Accordingly, the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy may not be withheld on this basis.

You state portions of the remaining information are excepted from disclosure under section 552.108(a)(2) of the Government Code. 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). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that the information you have marked may be withheld under section 552.108(a)(2) of the Government Code.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 359174

Enc. Submitted documents

c: Requestor
(w/o enclosures)