



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 27, 2009

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street-3108, Suite 728  
Richmond, Texas 77469

OR2009-15216

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# 360617.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for reports and call slips for a particular address from January 2009 until the date of the request. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a)(1) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report 09-11993 relates to a pending criminal prosecution by the District Attorney's office. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to report 09-11993.

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<sup>1</sup>We 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.

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: (2) 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). 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 conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report 09-9004 relates to a concluded investigation that was rejected by the District Attorney’s office for insufficient evidence. Accordingly, we agree that section 552.108(a)(2) is applicable to report 09-9004. Although you state that reports 09-3349 and 09-14490 are closed, you also state that they have been referred to the Justice of the Peace Court. Because these cases were referred to the Justice of the Peace, you have failed to explain how these reports pertain to closed cases that did not result in conviction or deferred adjudication. Therefore, we find that section 552.108(a)(2) is not applicable to reports 09-3349 and 09-14490 and they may not be withheld on that basis.

As you acknowledge, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Thus, the sheriff’s office must release the types of basic information listed in *Houston Chronicle Publishing Company 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). With the exception of basic information, the sheriff’s office may withhold reports 09-11993 and 09-9004 pursuant to section 552.108.

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. This exception encompasses information that other statutes make confidential. Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. 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.” *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code

ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). Upon review, we find no portion of the remaining information constitutes CHRI for the purposes of chapter 411 of the Government Code. Therefore, none of the remaining information may be withheld on that basis.

Section 552.101 also incorporates 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 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. We note that section 552.023 of the Government Code gives a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See Gov't Code* § 552.023. A portion of the information pertains to the requestor. Thus, in this instance, the requestor has a special right of access to her information, and the sheriff's office may not withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we have marked information not belonging to the requestor that is highly intimate or embarrassing and not of legitimate public concern. This marked information must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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 [or] a motor vehicle title or registration issued by an agency of this state." *Gov't Code* § 552.130(a). We note reports 09-3349 and 09-14490 contain Texas motor vehicle record information. Accordingly, the sheriff's office must withhold the marked information under section 552.130 of the Government Code.<sup>2</sup>

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<sup>2</sup>We note that the submitted information contains the requestor's Texas driver's license information. Ordinarily, this information would be withheld under section 552.130 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the sheriff's office receives another request for this particular information from a different requestor, then the sheriff's office should again seek a decision from this office.

In summary: (1) with the exception of basic information, the sheriff's office may withhold reports 09-11993 and 09-9004 under section 552.108; (2) the sheriff's office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the sheriff's office must withhold the Texas motor vehicle record information marked in reports 09-3349 and 09-14490 pursuant to section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 360617

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the remaining information includes social security numbers. Section 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. However, the requestor has a special right of access to her social security number and it must be released to her. *See generally* Gov't Code § 552.023(b).