



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2009

Mr. Dan T. Saluri
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

Ms. Donna L. Clarke
Assistant Criminal District Attorney
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2009-17944

Dear Mr. Saluri and Ms. Clarke:

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# 364648.

The Lubbock County Sheriff's Office (the "sheriff") and the City of Lubbock Police Department (the "department") received a request for all information pertaining to three named individuals and two specified addresses. The sheriff claims the information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. The department claims that the submitted information is excepted from disclosure under section 552.108 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." 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 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 requests require the sheriff and the department to compile unspecified police records concerning the three named individuals. Therefore, to the extent that the sheriff and the department maintain law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the sheriff or the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note both the sheriff and the department have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the named individuals' common-law right to privacy. Accordingly, we will address the arguments against the disclosure of this information.

The sheriff claims portions of the submitted information are confidential under common-law privacy. The types of information considered intimate or 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. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are 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 of no legitimate public interest. The sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Further, although some of the remaining information would generally be confidential under common-law privacy, we note that this information pertains to individuals who are not identified in the remaining information. Accordingly, no portion of the remaining information is confidential under common-law privacy.

The department claims section 552.108(a)(2) for report number 08-31229. 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 state report number 08-31229 pertains to an investigation that has been concluded but did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to report number 08-31229.

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report number 08-31229 under section 552.108(a)(2) of the Government Code.

The sheriff claims portions of the remaining information are excepted from disclosure under section 552.130. 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)(1), (2). We note, however, some of the information you have marked, including an individual’s date of birth, is not information that relates to a motor vehicle operator’s or driver’s license or a motor vehicle title or registration. We have marked this information for release. Accordingly, with the exception of the information we have marked for release, the sheriff must withhold the information you have marked under section 552.130 of the Government Code.¹

In summary, to the extent the sheriff or the department maintains records depicting any of the three named individuals as suspects, arrestees, or criminal defendants, the sheriff or the department must withhold such information under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of basic

¹ We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information, the department may withhold report number 08-31229 under section 552.108(a)(2). With the exception of the information we have marked for release, the sheriff must withhold the information you have marked under section 552.130. 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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long, sweeping horizontal line extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 364648

Enc. Submitted documents

cc: Requestor
(w/o enclosures)