



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2010

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

OR2010-05673

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# 376971.

The Williamson County Sheriff's Office (the "sheriff") received a request for information relating to the requestor and two other named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We initially note that the requestor does not seek access to social security, Texas driver's license, Texas license plate or vehicle identification numbers. Thus, to the extent that the submitted documents contain those types of information, they are not responsive to this request for information. This decision does not address the public availability of information that is not responsive to this request, and the sheriff need not release such information in response to the request.²

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²As we are able to make this determination, we do not address your claim under section 552.130 of the Government Code.

We also note that one of the submitted incident reports involves an alleged violation of section 32.51 of the Penal Code. *See* Penal Code § 32.51(b). Article 2.29 of the Code of Criminal Procedure pertains to an alleged violation 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 the 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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, report number C09-09-2833 involves alleged fraudulent use or possession of identifying information, and the requestor is listed as the crime victim. Therefore, that report may be subject to article 2.29 of the Code of Criminal Procedure. If article 2.29 is applicable, then the report must be released to this requestor, except to the extent that it contains confidential information. We note that the sheriff seeks to withhold some of the information in the report under section 552.136 of the Government Code, which is a confidentiality provision for the purposes of article 2.29.

We are unable to determine, however, whether report number C09-09-2833 pertains to an offense, no element of which occurred prior to September 1, 2005. Therefore, we must rule conditionally under article 2.29. Thus, if no element of the offense occurred prior to September 1, 2005, then article 2.29 is applicable to the report, and it must be released except for any confidential information. Section 552.136(b) states 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"). We have marked a bank account number in report number C09-09-2833 that the sheriff must withhold under

section 552.136.³ Although the report also contains the requestor's bank account and credit card numbers, which the sheriff would ordinarily be required to withhold under section 552.136, this exception protects personal privacy. Therefore, the requestor has a right of access to his own bank account and credit card numbers under section 552.023, and they may not be withheld under section 552.136.⁴ *See id.* § 552.023(a); ORD 481 at 4. Therefore, if no element of the offense occurred prior to September 1, 2005, then the sheriff must withhold the marked bank account number and release the rest of the information in report number C09-09-2833 pursuant to article 2.29 of the Code of Criminal Procedure. But if any element of the offense occurred prior to September 1, 2005, then article 2.29 is not applicable in this instance. In that event, the sheriff must dispose of report number C09-09-2833 in accordance with the rest of this decision.

Next, we address the sheriff's other exceptions to disclosure. Section 552.101 of the Government Code excepts "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) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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.

The instant request is for "all records pertaining to" the requestor and two other named individuals. Thus, this request for unspecified records requires the sheriff to compile the criminal histories of the requestor and the other named individuals, so as to implicate their

³We 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 a bank account number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁴As noted previously, this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including bank account and credit card numbers under section 552.136. Thus, if the sheriff receives another request for these same records from a person other than one with a right of access under section 552.023, the sheriff is authorized to withhold this requestor's credit card and bank account numbers under section 552.136 without the necessity of requesting an attorney general decision.

privacy interests. We note that the requestor would have a right of access under section 552.023 of the Government Code to any information maintained by the sheriff that would implicate the requestor's privacy interests. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).⁵ But to the extent the sheriff maintains any information that depicts either of the other two named individuals as a suspect, arrested person, or criminal defendant, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

Common-law privacy also protects information relating to an alleged sexual assault. *See Indus. Foundation*, 540 S.W.2d at 683. In Open Records Decision No. 393 (1983), this office concluded that generally only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, report number C09-12-9040 is related to an investigation of alleged sexual assault. The requestor was the suspect in the investigation and knows the name of the alleged crime victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude that the department must withhold report number C09-12-9040 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy also encompasses the other types of information that are held to be highly intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information in the remaining records that is highly intimate or embarrassing and not a matter of legitimate public interest. The sheriff also must withhold that information under section 552.101 in conjunction with common-law privacy.

⁵Section 552.023 provides in part that "[a] person or 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 that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

The sheriff also claims section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the remaining information, which you have marked, is related to pending criminal investigations. Based on your representation, we have marked information that may generally be withheld under section 552.108(a)(1). *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts “[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). You state that some of the remaining information, which you have marked, is related to criminal investigations that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that the information we have marked may generally be withheld under section 552.108(a)(2).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The sheriff may withhold the rest of the information we have marked under section 552.108.

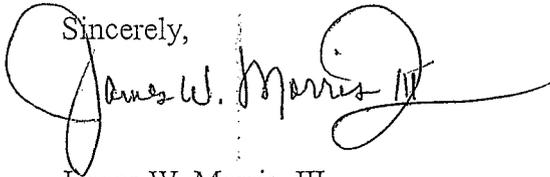
In summary: (1) if no element of the offense occurred prior to September 1, 2005, then report number C09-09-2833 must be released to the requestor, except for the marked bank account number that must be withheld under section 552.136 of the Government Code; (2) to the extent the sheriff maintains any information that depicts any of the named individuals other than the requestor as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy; (3) report number C09-12-9040 must be withheld in its entirety under section 552.101 in conjunction with common-law privacy; (4) the other information we have marked under section 552.101 in conjunction with common-law privacy also must be withheld; and (5) the information we have marked under section 552.108 of the Government Code may be withheld, except for the basic information that must be released

under section 552.108(c). The rest of the submitted information must be released.⁶ As we are able to make these determinations, we do not address your other arguments against disclosure.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 376971

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁶We note that report number C09-09-2833 contains personal financial information relating to the requestor that the sheriff would ordinarily be required to withhold under section 552.101 in conjunction with common-law privacy. The requestor has a right, however, to that information under section 552.023. Should the sheriff receive another request for report number C09-09-2833 from a person who would not have a right of access to this requestor's private information, the sheriff should resubmit that report and request another decision. See Gov't Code §§ 552.301(a), .302.