



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2010

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-05896

Dear Mr. Walker:

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# 382448.

The Montgomery County Sheriff's Department (the "sheriff") received a request for offense report number 10A003654, as well as the criminal history of the individuals arrested in connection with the offense. You indicate you will release some information to the requestor. You claim the remaining requested information is 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 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 common-law right of privacy, which protects information if it (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). 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 present request, in part, requires the sheriff to compile unspecified criminal history records concerning the arrestees in offense report number 10A003654, thus implicating these individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting either of the arrestees in offense report number 10A003654 as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted the offense report specified in the request as Exhibit B-2. This information does not implicate the privacy concerns of the arrestees in offense report number 10A003654. Therefore, we will address your argument against disclosure of this information.

You claim offense report number 10A003654, in Exhibit B-2, is excepted from disclosure under 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have submitted an affidavit from the Montgomery County District Attorney, stating that offense report number 10A003654 in Exhibit B-2 relates to a pending prosecution. Based on this representation, and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to Exhibit B-2. *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).

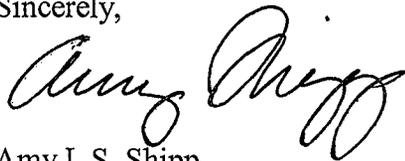
As you acknowledge, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, with the exception of basic information which you state you will release, the sheriff may withhold Exhibit B-2 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the sheriff maintains law enforcement records depicting either of the arrestees in offense report number 10A003654 as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the sheriff may withhold Exhibit B-2 under section 552.108 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, 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 382448

Enc. Submitted documents

cc: Requestor
(w/o enclosures)