



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2011

Mr. David Mendoza
Assistant District Attorney
Hays County Justice Center
110 East Martin Luther King
San Marcos, Texas 78666

OR2011-05617

Dear Mr. Mendoza:

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# 417881.

The Hays County Sheriff's Office (the "sheriff") received a request for booking photos or mug shots on every individual arrested from February 28, 2011 to March 6, 2011, as well as the jail log for the same period. You claim the 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You claim the requestor is asking the sheriff to compile unspecified law enforcement records. We note, however, that the request is for all booking photographs, mug shots, and jail logs pertaining to specified time periods. 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. In addition, we find the submitted information is not highly intimate or embarrassing or is of legitimate public interest. Thus, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used or developed in an investigation under chapter 261. Accordingly, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261.201 of Family Code). You do not indicate the sheriff has adopted a rule that governs the release of this type of information; therefore, we assume no such rule

exists. Given that assumption, we determine this information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold this information, which we have marked, under section 552.101 of the Government Code as information made confidential by law.²

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure information 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state “[t]he responsive information relates to cases that are pending and the criminal investigation [sic] continues.” Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Basic information refers to the information held to be public in *Houston Chronicle*, including the arrestee's name, race, sex, and address, the place of arrest, and the charge. *See* Open Records Decision No. 127 at 3 (1976). Thus, with the exception of the basic front-page offense and arrest information, the sheriff may withhold the remaining information under section 552.108(a)(1).

To conclude, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Government Code. With the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) 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.

²As our ruling is dispositive, we do not address your other argument to withhold this information.

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 L. Doggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 417881

Enc. Submitted documents

c: Requestor
(w/o enclosures)