



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2012

Captain MW Morgan
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2012-01804

Dear Captain Morgan:

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# 446216.

The Parker County Sheriff's Office (the "sheriff's office") received a request for all incident reports pertaining to a specified address during a specified time period. You state the sheriff's office has released some of the requested information, with social security numbers redacted pursuant to section 552.147 of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note you have redacted information from incident report number 2011-18148. You do not assert, nor does our review of our records indicate, the sheriff's office has been

¹See Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act).

²Although you also raise section 552.302 of the Government Code, this section 552.302 is not an exception to disclosure. See Gov't Code § 552.302 (providing that information is presumed public if governmental body that received written request failed to comply with procedural requirements of Gov't Code § 552.301 when requesting open records decision).

³We 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.

authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), 552.302.

Section 552.108(a) 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[.]" 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* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report numbers 2011-25709 and 2011-18240 relate to pending criminal investigations. Based on this representation, we conclude the release of the information you have marked in these reports 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). Thus, the sheriff's office may withhold the information you have marked in incident report numbers 2011-25709 and 2011-18240 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section 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 demonstrated. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). In addition, a compilation of an individual's criminal history record information 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) (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 individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Some of the remaining information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130. The sheriff's office must withhold the motor vehicle record information we have marked in the remaining information under section 552.130.

Some of the remaining information is excepted from disclosure under section 552.136 of the Government Code.⁴ Section 552.136 provides the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see, e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

(b) Notwithstanding any other provision of this chapter, 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. The sheriff's office must withhold the access device numbers we have marked under section 552.136 of the Government Code.

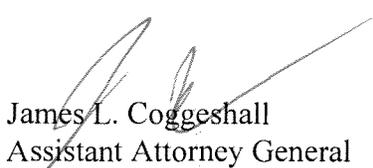
Finally, we note you have marked some of the remaining information in incident report numbers 2011-10073 and 2011-18148, but have provided no arguments explaining why this information is excepted from disclosure under the Act. *See id.* § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Thus, you have not established any of the remaining information is excepted from release under the Act.

To conclude, the sheriff's office may withhold the information you have marked in incident report numbers 2011-25709 and 2011-18240 under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.130 and 552.136 of the Government Code. The sheriff's office must release the remaining information, including the information you redacted in incident report number 2011-18148.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 446216

Enc. Submitted documents

c: Requestor
(w/o enclosures)