



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Mr. Robert Henneke
Kerr County Attorney
700 Main Street Suite BA-103
Kerrville, Texas 78028

OR2013-00978

Dear Mr. Henneke:

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# 481404.

The Kerr County Sheriff's Department (the "department") received a request for information involving a named individual. You state some of the requested information has been released. You claim other responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. This exception 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. *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, and is generally not of legitimate concern to the public. *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).

The present request is for "everything that [the named individual] has on record." This request for unspecified law enforcement records requires the department to compile the individual's criminal history and thereby implicates her privacy interests. Therefore, to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not depict the named individual as a suspect, arrested person, or criminal defendant. That information does not implicate the individual's privacy interests and may not be withheld on that basis under section 552.101.

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). 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 the submitted information pertaining to case numbers 2007-01916, 20040302815, 20041211484, 2006-09755, 2007-04230, and 2009-00750 is related to cases that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to the information pertaining to those case numbers.

We note 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 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). *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 department 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 department may withhold the remaining information pertaining to case numbers 2007-01916, 20040302815, 20041211484, 2006-09755, 2007-04230, and 2009-00750 under section 552.108(a)(2) of the Government Code.

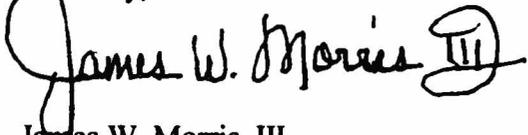
In summary, the department (1) must withhold any information it maintains that depicts the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) may withhold the

information pertaining to case numbers 2007-01916, 20040302815, 20041211484, 2006-09755, 2007-04230, and 2009-00750 under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c), which must be released.¹

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 that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

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

JWM/bhf

Ref: ID# 481404

Enc: Submitted documents

c: Requestor
(w/o enclosures)

¹As we are able to make these determinations, we need not address your other arguments against disclosure.