



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2013

Ms. Ashley D. Fourt
Assistant District Attorney
Office of the Criminal District Attorney
Tarrant County
401 West Belknap, Ninth Floor
Fort Worth, Texas 76196-0201

OR2013-04234

Dear Ms. Fourt:

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# 481336.

The Tarrant County District Attorney's Office (the "district attorney") received a request for all arrest records and convictions related to two named individuals. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.132, 552.1325, and 552.147 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 doctrine of common-law 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). To demonstrate the applicability of common-law privacy, both prongs of this 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. 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 that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to two named individuals. This request requires the district attorney to compile the named individuals' criminal history and implicates the named individuals' right to privacy. Therefore, to the extent the district attorney maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the district attorney must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor states he is the husband of one of the individuals named in the request. Accordingly, as the spouse of this individual, he may be acting as the authorized representative of this individual. Section 552.023 of the Government Code gives a person or a person's authorized representative 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 disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Accordingly, if the requestor is not acting as his spouse's authorized representative, to the extent the district attorney's office maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the district attorney's office must withhold such information under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as his spouse's authorized representative, he has a special right of access to the compilation of his spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 on the basis of the common-law privacy interests of his wife. In that instance, we will address the applicability of your other raised exceptions to the information at issue.

You assert the responsive information is excepted from disclosure under section 552.108 of the Government Code, which states in pertinent part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). 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). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) held, "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You state the request for information encompasses the entire prosecution file of the district attorney for the specified case. You further state the submitted information reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, upon review, we conclude section 552.108(a)(4) of the Government Code is applicable to the information at issue.

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 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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney may withhold the information at issue under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.

In summary, to the extent the district attorney maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the district attorney must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as his spouse's authorized representative, he has a special right of access to the compilation of his spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 on the basis of the common-law privacy interests of his wife. In that instance, the district attorney may withhold the information at issue, to the extent it exists, under section 552.108(a)(4) of the Government Code, with the exception of basic information.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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 481336

Enc. Submitted documents

c: Requestor
(w/o enclosures)