



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2013

Ms. Renae Mayfield
Custodian of Records
Kaufman County Sheriff's Office
Post Office Drawer 849
Kaufman, Texas 75142

OR2013-13300

Dear Ms. Mayfield:

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# 496192.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for all incident reports regarding a named person and a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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*

¹Although you also cite to section 552.102 of the Government Code in your brief, we understand you to assert section 552.101 based on the substance of your arguments.

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.

We understand you to assert the present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individual and thus implicates this individual's right to privacy. However, after reviewing the request and the submitted information, we find the requestor is seeking a report pertaining to a specified arrest. Accordingly, the request does not implicate the named individual's right to privacy, and the submitted information may not be withheld on this basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the sheriff's office may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note, however, the requestor is an investigator with the Texas Board of Nursing (the "board"). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or

(3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov't Code § 411.125. In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). "Criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, under sections 411.125 and 411.087, the requestor may have a right of access to any criminal history record information about the named individual contained in the sheriff's office's records. The submitted report lists the named individual as an arrested person. Thus, the report may contain criminal history record information about this individual.

Accordingly, if the individual at issue is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the requestor is authorized to obtain the criminal history record information in the submitted report from the sheriff's office pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .082(2), .125(a). Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* Thus, if any of these conditions are met, then the sheriff's office must make available to the requestor criminal history record information under section 411.087. In that instance, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the individual who is named as the arrested person in the report does not meet any of the criteria of subsection 411.125(1)-(3), then the board does not have a special right of access to the criminal history record information under section 411.087. In that event, with the exception

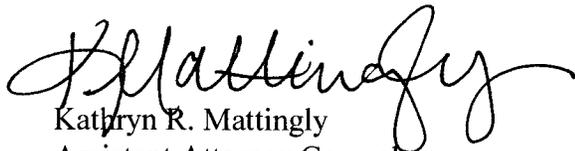
of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, if the board has a right of access pursuant to section 411.087(a)(2) of the Government Code, the sheriff's office must make available to the requestor criminal history record information regarding the named individual under section 411.087 but may withhold the remaining information under section 552.108(a)(2) of the Government Code, with the exception of basic information. If the board does not have a right of access to the criminal history record information under section 411.087 then, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 496192

Enc. Submitted documents

c: Requestor
(w/o enclosures)