



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 25, 2013

Ms. Michelle T. Rangel  
Assistant County Attorney  
County Attorney's Office  
County of Fort Bend  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2013-20484

Dear Ms. Rangel:

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# 506879.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for every document pertaining to the requestor as an adult. You claim the submitted 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 information.

Section 552.101 of the Government Code excepts "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 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) (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.

You assert the requestor is seeking a criminal history compilation. However, in this instance, the requestor seeks reports pertaining to himself. The requestor has a special right of access to his own information. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, none of the submitted information may be withheld as a compilation of criminal history under section 552.101 of the Government Code.

We have marked documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) requires disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). In this instance, the submitted information includes magistrate-signed documents. This information is expressly public under section 552.022(a)(17), and the sheriff's office must release it unless it is confidential under the Act. You raise section 552.108 of the Government Code for this information. However, section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. See *id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the sheriff's office may not withhold the magistrate-signed documents under section 552.108 of the Government Code. Accordingly, as you raise no further exceptions to disclosure for these documents, the magistrate-signed documents, which we have marked, must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your arguments against the release of the information not subject to section 552.022.

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[.]" 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), 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the release of the remaining 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).

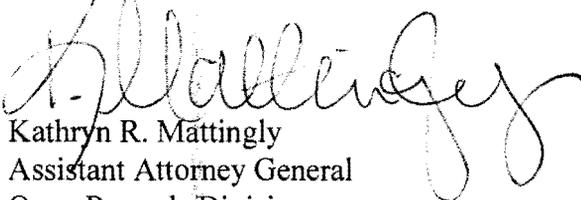
However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold the remaining information from disclosure based on section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the marked magistrate-signed documents must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information from disclosure based on section 552.108(a)(1) of the Government Code.<sup>2</sup>

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](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/som

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

<sup>2</sup>We note the requestor has a right of access to the information being released in this instance. See Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office. We also note basic information contains the social security numbers of arrested persons. See ORD 127. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). However, the requestor has a right of access to his own social security number under section 552.023 of the Government Code. See generally *id.* § 552.023(a).

Ref: ID# 506879

Enc. Submitted documents

c: Requestor  
(w/o enclosures)