



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2014

Ms. Rebekah Whitworth
County Attorney
Mason County
P.O. Box 157
Mason, Texas 76856

OR2014-15316

Dear Ms. Whitworth:

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# 535124.

The Mason County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to two named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted sheriff's office dispatch logs contain records of several additional calls which are not responsive to the present request as these calls do not pertain to the individuals named in the request. Accordingly, entries in the submitted dispatch logs which do not pertain to calls related to the two individuals named in the request are non-responsive. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

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 if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 elements of this test must be established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The present request requires the sheriff’s office to compile unspecified law enforcement records concerning the individuals named in the request. We find this request for unspecified law enforcement records implicates the named individuals’ right to privacy. Therefore, to the extent the sheriff’s office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff’s office must withhold such information under section 552.101 in conjunction with common-law privacy.² However, information that refers to the named individuals solely as victims, witnesses, or involved persons is not private and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. Accordingly, we will address your arguments against the disclosure of this information.

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 the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state calls for service numbers 12-001668, 12-03000415, 13-4000612, 13-05000788, 13-9001642, 13-10001865, 14-000048, and 14-03000465 are closed investigations that did not result in

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

a conviction or deferred adjudication. Based on these representations, we conclude section 552.108(a)(2) of the Government Code is applicable to calls for service numbers 12-001668, 12-03000415, 13-4000612, 13-05000788, 13-9001642, 13-10001865, 14-000048, and 14-03000465.

However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, the location of the crime, but does not include the complainant's telephone number. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may withhold calls for service numbers 12-001668, 12-03000415, 13-4000612, 13-05000788, 13-10001865, 13-9001642, 14-000048, and 14-03000465 under section 552.108(a)(2) of the Government Code.

We understand you to assert some of the basic information is excepted from disclosure under section 552.101 in conjunction with common-law privacy. As noted above, common-law privacy protects the types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find no portion of the basic information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy.

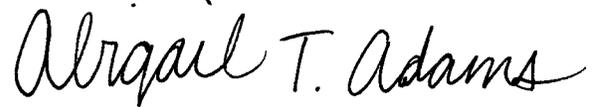
In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff's office may withhold calls for service numbers 12-001668, 12-03000415, 13-4000612, 13-05000788, 13-9001642, 13-10001865, 14-000048, and 14-03000465 under section 552.108(a)(2) of the Government Code. The sheriff's office must release the remaining submitted responsive information.

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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive style with a large initial 'A'.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 535124

Enc. Submitted documents

c: Requestor
(w/o enclosures)