



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2014

Ms. M. Ann Montgomery-Moran
Assistant Ellis County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2014-23177

Dear Ms. Montgomery-Moran:

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# 547910.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for reports and photographs pertaining to the requestor and a named individual at a specified address. You state the sheriff's office will release some of the requested information. 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 information we have marked is not responsive to the instant request for information because the requestor specifically requested information pertaining to incidents in which the requestor is the victim and the named individual is the suspect or because the information at issue was created after the date of the instant request for information. 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 we are able to make this determination, we need not address your arguments under sections 552.108(a)(1) and 552.108(b)(1) of the Government Code.

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 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. *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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that 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. United States 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). We further find that 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 the criminal history of the named individual. After reviewing the request and the responsive information, however, we believe the requestor is seeking specific domestic violence reports involving the named individual in which she is the victim. Accordingly, this request does not implicate the named individual’s right to privacy, and the responsive information may not be withheld under section 552.101 as part of a criminal history compilation.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked relates to concluded investigations that did not result in convictions or deferred adjudications. However, the submitted information reflects the information in case number 09-15959 relates to a concluded investigation that did result in a conviction. Accordingly, the sheriff’s office may not withhold the information you have marked in case number 09-15959 under section 552.108(a)(2). Based on your representation and our review, however, we find section 552.108(a)(2) of the Government Code is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See Houston*

Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note some of the information at issue consists of calls for service reports. In Open Records Decision No. 649 (1996), this office concluded information contained in a computer-assisted dispatch report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Accordingly, with the exception of the basic information, which you state you will release, and the information in case number 09-15959, the sheriff's office may withhold the information you have marked in the responsive information under section 552.108(a)(2) of the Government Code.²

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Common-law privacy also protects the types of information considered intimate and embarrassing by the Texas Supreme Court, which are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the driver's license information you have marked, along with the information we have marked, under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the sheriff's office may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, with the exception of the basic information, which you state you will release, and the information in case number 09-15959, the sheriff's office may withhold the information you have marked in the responsive information under section 552.108(a)(2) of

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

the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the driver's license information you have marked, along with the information we have marked, under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers you have marked under section 552.147 of the Government Code. The sheriff's office must release the remaining responsive information.³

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 547910

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles).