



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Mr. Carlos Omar Garcia  
District Attorney  
79<sup>th</sup> Judicial District Attorney's Office  
P.O. Drawer 3157  
Alice, Texas 78333

Mr. Leroy L. Persohn, IV  
First Assistant District Attorney  
79<sup>th</sup> Judicial District Attorney's Office  
P.O. Drawer 3157  
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OR2015-05317

Dear Mr. Garcia and Mr. Persohn:

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# 559179.

The 79th Judicial District Attorney's Office (the "district attorney's office") received a request for (1) the criminal history of a named individual; (2) all records related to any sexual assault case against the named individual, including two specified cases; (3) all records related to any sexual assault on a specified company's premises; and (4) any communications between the district attorney's office and the specified company concerning two named individuals. You state the district attorney's office has no responsive information related to one of the specified sexual assault cases.<sup>1</sup> We understand you will redact a driver's license number pursuant to section 552.130(c) of the Government Code and a social security number

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

pursuant to section 552.147 of the Government Code.<sup>2</sup> 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 from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses 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. This office has found 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) (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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks the criminal history of a named individual. This aspect of the request requires the district attorney’s office to compile the named individual’s criminal history and implicates the privacy of the named individual. Therefore, to the extent the district attorney’s office maintains unspecified law enforcement records, other than information pertaining to the specified cases, listing the named individual as a suspect, arrestee, or criminal defendant, the district attorney’s office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the district attorney’s office has submitted documents relating to one of the cases specified by the requestor. This information is not part of a compilation of the named individual’s criminal history, and the district attorney’s office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will consider your arguments against disclosure of this information.

Section 552.108 provides, in relevant part, as follows:

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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See id.* § 552.147(b).

(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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(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), (b)(3). 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 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 instant request for information encompasses the entire prosecution file of the district attorney's office for one of the specified cases. Further, you assert the submitted information reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, upon review, we conclude sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the information at issue. Therefore, the district attorney's office may generally withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.

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 also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney's office may withhold the submitted information pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.

In summary, to the extent the district attorney's office maintains unspecified law enforcement records, other than information pertaining to the specified cases, listing the named individual as a suspect, arrestee, or criminal defendant, the district attorney'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, which must be released, the district attorney's office may withhold the submitted information pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.<sup>3</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,

  
Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

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<sup>3</sup> We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(a). Accordingly, if the district attorney's office receives another request for this same information from another requestor, it must again seek a ruling from this office.

Ref: ID# 559179

Enc. Submitted documents

c: Requestor  
(w/o enclosures)