



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2015-22809

Dear Mr. Grove:

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# 585196.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor, a named individual, and a specified address during a specified time period. You state the sheriff's office has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 request, in part, seeks all reports pertaining to the named individual over a specified time period. This portion of the request requires the sheriff's office to compile the named individual's criminal history and implicates the named individual's right to privacy. The requestor is, in part, also seeking domestic violence reports involving herself and the named individual. This aspect of the request does not implicate the named individual's right to privacy, and the submitted domestic violence reports involving the requestor and the named individual may not be withheld as a compilation of his criminal history under section 552.101 in conjunction with common-law privacy on the basis of the named individual's privacy interests. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records, other than the domestic violence reports involving the requestor and the named individual, depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the sheriff's office has submitted information that does not depict the named individual as a suspect, arrestee, or a criminal defendant. This information does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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 report number 13-26972 relates to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue 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) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per*

curiam, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) is applicable to report number 13-26972.

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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 03-23382, 06-19635, 07-22381, 07-23732, and 10-13353 relate to concluded cases that did not result in convictions or deferred adjudications. Based on your representations, we conclude section 552.108(a)(2) is applicable to report numbers 03-23382, 06-19635, 07-22381, 07-23732, and 10-13353.

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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold report number 13-26972 under section 552.108(a)(1) of the Government Code and report numbers 03-23382, 06-19635, 07-22381, 07-23732, and 10-13353 under section 552.108(a)(2) of the Government Code.²

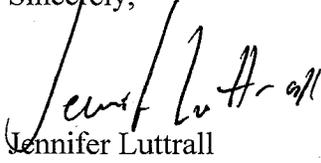
In summary, to the extent the sheriff's office maintains unspecified law enforcement records, other than the domestic violence reports involving the requestor and the named individual, depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any 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 sheriff's office may withhold report number 13-26972 under section 552.108(a)(1) of the Government Code and report numbers 03-23382, 06-19635, 07-22381, 07-23732, and 10-13353 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.

²As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure. We note basic information includes an arrestee's social security number. 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. *See* Gov't Code § 552.147(b).

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, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and "L".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 585196

Enc. Submitted documents

c: Requestor
(w/o enclosures)