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ATTORNEY GENERAL OF TEXAS

December 1, 2015

Mr. Kyle O. Jones
Assistant District Attorney
Criminal District Attorney's Office
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2015-24967

Dear Mr. Jones:

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# 588774.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified address during a specified time period and information pertaining to named individuals during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

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

¹We note the sheriff's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 request, in part, seeks all reports pertaining to named individuals over a specified time period. This portion of the request requires the sheriff's office to compile the named individuals' criminal histories and implicates the named individuals' rights to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.² We note the sheriff's office has submitted information that does not depict the named individuals as suspects, arrestees, or a criminal defendants. This information does not constitute a criminal history compilation protected by common-law privacy. Thus, we will address your arguments against disclosure of the information at issue.

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. You state the information at issue in Exhibit D relates to criminal investigations that did not result in convictions or deferred adjudications. Accordingly, we find section 552.108(a)(2) is applicable to the information at issue in Exhibit D.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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

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

S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the sheriff's office may withhold the information at issue in Exhibit D under section 552.108(a)(2) of the Government Code.³

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You seek to withhold the informer's identifying information from the basic information in several of the reports at issue, and portions of the remaining information, based on the common-law informer's privilege. We note, in some cases, the callers in the reports at issue alleged violations of law to the sheriff's office. You state the sheriff's office has no indication the subjects of the calls know the identities of the complainants. Based on your representation and our review, we conclude in releasing basic information from the reports at issue, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, in the remaining reports at issue the callers do not allege criminal or civil violations. Consequently, the sheriff's office may not withhold the information you marked in the remaining reports at issue based on section 552.101 in conjunction with the informer's privilege.

You seek to withhold portions of the remaining information under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

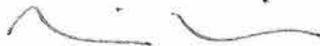
with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand Brazoria County is part of an emergency communication district that is subject to section 772.318. The sheriff's office states the remaining information at issue was provided by a service supplier. Thus, the sheriff's office must the information you marked in Exhibit F under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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, the sheriff's office may withhold the information at issue in Exhibit D under section 552.108(a)(2) of the Government Code. The sheriff's office may withhold the information we marked within the basic information under section 552.101 of the Government Code in conjunction with the informer's privilege. The sheriff's office must withhold the information you marked in Exhibit F under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The remaining information must be released.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

Ref: ID# 588774

Enc. Submitted documents

c: Requestor
(w/o enclosures)