



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2016

Mr. Ryan S. Sullivan
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street
Houston, Texas 77002

OR2016-01288

Dear Mr. Sullivan:

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# 594384 (HCSO File Numbers 14SO700451 and 14SO500568).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to two named individuals and a specified address during a specified period of time. You state you have released some information. You state the sheriff's office no longer has some of the requested information due to it being destroyed pursuant to the sheriff's office's retention policy.¹ 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 "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 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.

¹The 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. 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. Upon review, we find the present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. 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 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interest of the named individuals. This information is not part of a criminal history compilation and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address your arguments for this information.

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 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 in audio recording 681618 and call sheets CD140728267, CD140802669, CD14043078, CD140720963, CD140728262, and CD150615817 pertains to criminal investigations that concluded in results other than convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the 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). Basic information refers to the basic "front-page" offense and arrest 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* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, a detailed description of the offense. *See id.* at 3-4. Some of the remaining information consists of call sheets. 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 basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In this instance, a portion of the basic information contains information subject to section 552.101 of the Government Code, which also encompasses the doctrine of common-law privacy. Common-law privacy 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. *See 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 established. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* 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 marked meets the standard articulated 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.

In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the department may withhold audio recording 681618 and call sheets CD140728267, CD140802669, CD14043078, CD140720963, CD140728262, and CD150615817 under section 552.108(a)(2) of the Government Code. In releasing basic information 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.

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 "Katelyn Blackburn-Rader". The signature is written in a cursive, flowing style.

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 594384

Enc. Submitted documents

c: Requestor
(w/o enclosures)