



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County Criminal District Attorney's Office
133 North Riverfront Boulevard, LB019
Dallas, Texas 75207-4399

OR2016-09889

Dear Ms. Roeder:

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# 608030.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for (1) the name, address, and offense(s) of each adult criminal case filed by the district attorney's office on a specified date; (2) the name, address, and offense(s) of each adult grand jury case filed by the district attorney's office on a specific date; and (3) the name, address, offense(s), and disposition for each grand jury case addressed, heard, or held on a specific date. You state the district attorney's office does not maintain some of the requested information¹ and the district attorney's office has released information responsive to the third category of the request. You claim the submitted information is excepted from

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information, which we understand constitutes a representative sample.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your contention you do not have the requested information according to the criteria or format the requestor seeks and complying with the request “is not feasible and would result in substantial interference with the [district attorney’s office’s] operations,” requiring extensive personnel and programming time. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2. Further, the Act does not require a governmental body to compile information or prepare new information. *See Bustamante*, 562 S.W.2d 266; ORD 452 at 3. However, we note a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Accordingly, a governmental body does have a duty to make a good-faith effort to relate a request for information to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Thus, documents in any format from which the information responsive to the request may be derived are responsive to the request. You have submitted information we understand constitutes a representative sample of the type of information that is responsive to the request. Accordingly, we will consider your arguments against public disclosure of the submitted information.

Next, we note, in pertinent part, the requestor only requested the name, address, and offense of each adult criminal case and grand jury case filed on a specified date. Thus, the remaining submitted information is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the district attorney’s office is not required to release non-responsive information in response to this request.

²Although you also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note the proper exceptions to raise when asserting the attorney-client privilege and the attorney work product privilege in this instance are sections 552.107 and 552.111 of the Government Code, respectively. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2 (2002).

³We 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.

Next, we must address the obligations of the district attorney's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether the requested information is exempted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the district attorney's office received the instant request on December 18, 2015. On January 7, 2016, you state, and submit supporting documentation showing, pursuant to section 552.231 of the Government Code, the district attorney's office informed the requestor his request required new programming and manipulation of data in a database that was still in development and provided the requestor an estimate of costs for the programming. *See id.* § 552.231 (establishing the procedure for responding to a request for information that requires programming or manipulation of data). The district attorney's office received the requestor's notification of agreement to the cost and conditions stipulated pursuant to section 552.231 on January 27, 2016. You do not inform us the district attorney's office was closed for business on any of the days at issue. Accordingly, the district attorney's office's ten-business-day deadline was February 10, 2016. However, the envelope in which you placed the information required by section 552.301(b) bears a post meter mark of February 19, 2016. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the district attorney's office failed to comply with the procedural requirements set out under section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise sections 552.107, 552.108, and 552.111 of the Government Code, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 677 at 10 (attorney work product privilege under section 552.111 and rule 192.5 may be waived), 676 at 6 (attorney-client privilege under section 552.107(1) and rule 503 may be waived), 117 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, in failing to comply with

section 552.301, the district attorney's office has waived its claims under sections 552.107, 552.108, and 552.111 of the Government Code. Therefore, none of the responsive information may be withheld under these exceptions. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the responsive information.

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 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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request requires the district attorney's office to compile unspecified law enforcement records concerning individuals, which implicates the privacy interests of such individuals. However, we note the requestor has not named any individuals in his request. Thus, we find the request does not implicate a named individual's right to privacy, and the district attorney's office may not withhold the responsive information as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions, the district attorney's office must release the responsive information.

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 "Cole Hutchison". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 608030

Enc. Submitted documents

c: Requestor
(w/o enclosures)