



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2015

Mr. Buster Nixon
Mason County Sheriff's Office
P.O. Box 391
Mason, Texas 76856

OR2015-05700

Dear Mr. Nixon:

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# 562951.

The Mason County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to two named individuals or a specified address during a specified time period. 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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request seeks all reports pertaining to two named individuals. This request requires the sheriff's office to compile the named individuals' criminal histories and implicates the right to privacy of each named individual. Therefore, to the extent the sheriff's office maintains law enforcement records listing either named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold 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 list either named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of either named individual's criminal history, and the sheriff'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 address your remaining arguments against disclosure of this information.

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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states the information submitted as Exhibits 1, 3, and 4 pertains to concluded criminal investigations that did not result in conviction or deferred adjudication. Upon review, we find section 552.108(a)(2) is applicable to Exhibits 3 and 4.

We note 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 information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold Exhibits 3 and 4 under section 552.108(a)(2) of the Government Code.

However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, *writ denied*) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, *no pet.*) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982).

The information submitted as Exhibit 1 relates to a complaint against an officer of the sheriff's office. The sheriff's office does not inform us the complaint resulted in any criminal investigation of the officer's conduct by the sheriff's office. Therefore, the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) to Exhibit 1, and the sheriff's office may not withhold Exhibit 1 under section 552.108(a)(2) of the Government Code.

You argue some of the remaining information is protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information 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 listing either named individual as a suspect, arrestee, or criminal defendant, the sheriff'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, the sheriff's office may withhold Exhibits 3 and 4 under section 552.108(a)(2) of the Government Code. The sheriff's office must release the remaining 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 562951

Enc. Submitted documents

c: Requestor
(w/o enclosures)