



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2017

Mr. Daniel W. Ray
Counsel for Hunt County
Scott, Ray & Sullivan PLLC
P.O. Box 1353
Greenville, Texas 75403-1353

OR2017-07961

Dear Mr. Ray:

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# 653239.

The Hunt County Sheriff's Office (the "sheriff's office"), which you represent, received a request for all records involving a specified address, the requestor, or another named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted 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."² Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and

¹Although you also raise section 552.103 of the Government Code for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) the information is 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. 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 present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the individual named in the request other than the requestor, and thus, implicates the other named individual's right to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the other 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. However, we note the requestor also seeks police reports involving herself. This part of the request seeks specified records involving the requestor and does not implicate the other named individual's right to privacy. Further, the requestor has a special right of access to her own information that would ordinarily be withheld to protect her privacy interests. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, information relating to the requestor may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. We also note the sheriff's office has submitted information that does not list the other named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the other named individual's criminal history, and the sheriff's office may not withhold it under section 552.101 in conjunction with common-law privacy on that basis.

We note Exhibit C includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). You seek to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff's office

may not withhold the court-filed documents, which we have marked, under section 552.108. As you raise no further exceptions to disclosure for this information, the sheriff's office must release the information in Exhibit C that is subject to section 552.022(a)(17) of the Government Code. However, we will address your arguments under section 552.108 against disclosure of the remaining information.

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 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 Exhibit C pertains to active criminal investigations or prosecutions. Based on your representation, we conclude the 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information in Exhibit C.

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 has 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 Exhibit D pertains to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to Exhibit D.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code and may withhold Exhibit D under section 552.108(a)(2) of the Government Code.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the other 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. The sheriff's office must release the

information in Exhibit C that is subject to section 552.022(a)(17) of the Government Code, which we have marked. With the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code and may withhold Exhibit D 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.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 653239

Enc. Submitted documents

c: Requestor
(w/o enclosures)