



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 14, 2017

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2017-15807

Dear Ms. Sheely:

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# 666201.

The Travis County Attorney's Office (the "county attorney's office") received a request for information regarding three specified cases involving three named individuals. 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. *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. 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. Although you contend the submitted information is protected by common-law privacy as a compilation of criminal records, we note the requestor seeks specified records. Thus, we find you have failed to demonstrate the present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individual. Accordingly, none of the submitted information may be withheld as a compilation of the individual's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note the submitted information contains a court-filed document. 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 made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the county attorney's office may not withhold the court-filed document, which we indicated, under section 552.108. As you raise no other exceptions to disclosure of the marked court-filed document, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining 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. 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); Open Records Decision No. 434 (1986). You state case numbers C-1-CR-15-160010 and C-1-CR-08-150213 pertain to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to case numbers C-1-CR-15-160010 and C-1-CR-08-150213.

Section 552.108(a)(4) of the Government Code provides, in pertinent part, the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a county attorney's "entire litigation file" was "too broad" and held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380 (internal quotations omitted) (quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993)).

The remaining information consists of the county attorney's office's file on a named individual and a specified case. You assert the instant request is for the county attorney's office's entire prosecution file for the specified case. You argue that "the choice of materials to be included in the file reveals the prosecutor's legal reasoning and thought processes[.]" Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the county attorney's office may withhold case numbers C-1-CR-15-160010 and C-1-CR-08-150213 under section 552.108(a)(2) and case number C-1-CR- 16-150216 under section 552.108(a)(4) of the Government Code.<sup>1</sup>

In summary, the county attorney's office must release the information we indicated under section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the county attorney's office may withhold case numbers C-1-CR-15-

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

160010 C-1-CR-08-150213 under section 552.108(a)(2) of the Government Code and the remaining information under section 552.108(a)(4).

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](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,



Patrick P. Mehaffy  
Attorney  
Open Records Division

PPM/eb

Ref: ID# 666201

Enc. Submitted documents

c: Requestor  
(w/o enclosures)