



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2019

Mr. Isidro R. Alaniz
District Attorney
49th Judicial District
P. O. Box 1343
Laredo, Texas 78042-1343

OR2019-20174

Dear Mr. Alaniz:

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# 776843.

The Webb County Sheriff's Office (the "sheriff's office") received a request for information pertaining to two named individuals during a specified time period. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

Initially, we must address the obligations of the sheriff's office under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The sheriff's office received the request for information on April 29, 2019. Thus, the sheriff's office's ten-business-day deadline was May 13, 2019. However, the envelope in which the sheriff's office provided the information required by section 552.301(b) was meter-marked May 15, 2019. Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301 in requesting a decision.

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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). The sheriff's office claims section 552.108 of the Government Code for the requested information. We note the requested information is subject to section 552.101 of the Government Code.¹ Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section. However, we find you have failed to establish a compelling reason to address your claimed exception.

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.


The present request requires the sheriff's office to compile unspecified law enforcement records concerning the individuals at issue. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 776843

Enc. Submitted documents

c: Requestor
(w/o enclosures)