



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-26462

Dear Ms. Lary:

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# 787018.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified address and information pertaining to two named individuals from specified time periods. You state you will release some information to the requestor. 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 representative sample of information.¹

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

¹ We 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.

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, in part, seeks all reports pertaining to either of two named individuals. This request requires the sheriff's office to compile the named individuals' criminal histories and implicates each named individual's right to privacy. 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.²

We note the sheriff's office has submitted information that does not list either of the named individuals as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individuals' criminal histories, 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 the applicability of other exceptions to disclosure of this 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. *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). The sheriff's office states call slips P181260053 and P180670111 pertain to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to call slips P181260053 and P180670111.

However, 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. 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). Thus, with the exception of basic information, the sheriff's office may withhold call slips P181260053 and P180670111 under section 552.108(a)(2) of the Government Code.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.

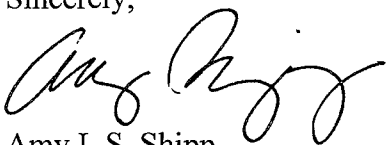
As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *See Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We find the sheriff's office has failed to demonstrate the basic information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold any of the basic information under section 552.101 of the Government Code on the basis of 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 the basic information, which must be released, the sheriff's office may withhold call slips P181260053 and P180670111 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/be

Ref: ID# 787018

Enc. Submitted documents

c: Requestor
(w/o enclosures)