



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 10, 2022

Mr. Matthew Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2022-04040

Dear Mr. Entsminger:

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# 930536 (PIR #994919-1).

The Travis County Attorney's Office (the "county attorney's office") received a request for information pertaining to two specified cause numbers and two 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 representative sample of information.<sup>1</sup>

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. 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*,

---

<sup>1</sup> 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.

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 county attorney's office to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the county attorney's office maintains unspecified law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, the county attorney's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor also seeks information pertaining to two specified cause numbers. Because the requestor specifically asks for this information, it is not part of a compilation of either named individual's criminal history. Thus, this information is not confidential under common-law privacy as a compilation of criminal history, and the county attorney's office may not withhold it under section 552.101 of the Government Code on that ground.

We note the information at issue contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) of the Government Code provides required 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). Although the county attorney's office seeks to withhold this information under section 552.108 of the Government Code, 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* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the court-filed document, which we marked, may not be withheld under section 552.108. We also note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed document may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, the county attorney's office must release the court-filed document, which we marked, pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information at issue.

Section 552.108 of the Government Code states, 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) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

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

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

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also* Open Records Decision No. 434 at 2-3 (1986). *In Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) (orig. proceeding), held "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. The county attorney's office states the present request encompasses the entire prosecution files of the county attorney's office for the cause numbers at issue. In addition, the county attorney's office states the information at issue reflects the mental impressions or legal reasoning of attorneys representing the state in the cause numbers at issue. Based upon these representations and our review, we agree sections 552.108(a)(4) and 552.108(b)(3) apply to the information at issue.

However, we note 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). 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the county attorney's office may

withhold the remaining information pertaining to cause numbers C-1-CR-07-224036 and C-1-CR-20-206903 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

In summary, to the extent the county attorney's office maintains unspecified law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, the county attorney's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The county attorney's office must release the court-filed document, which we marked, pursuant to 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 the remaining information pertaining to cause numbers C-1-CR-07-224036 and C-1-CR-20-206903 under sections 552.108(a)(4) and 552.108(b)(3) 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jm

Ref: ID# 930536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.