



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2006

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2006-11779

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# 261401.

The City of Longview (the "city") received a request for information related to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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." 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 (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 demonstrated. *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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have reviewed the submitted information and agree that the city must withhold the information you have marked under section 552.101 in conjunction with common law privacy.

Section 552.108 of the Government Code excepts from public 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information is maintained by the Longview Police Department. You state that the submitted information "was generated by and is held by the City of Longview Police Department" and that the information relates to an active criminal prosecution. Based on your representation, we conclude that section 552.108(a)(1) is applicable to the information you have marked. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Therefore, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that Texas motor vehicle record information is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, however, that some of the information you have marked relates to the requestor. Section 552.130 protects privacy interests, and the person to whom such information relates has a right of access to such information under section 552.023 of the Government Code. *See id.* § 552.023. Accordingly, the requestor has a right of access to her Texas motor vehicle record information under section 552.023, and the city may not withhold it under section 552.130. The city must withhold the remaining Texas motor vehicle record information marked under section 552.130.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common law privacy. The city may also withhold the information you have marked under section 552.108(a)(1) of the Government Code. Finally, other than information to which the requestor has a right off access under section 552.023 of the Government Code, the city must withhold the Texas motor vehicle

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<sup>1</sup>As our ruling under section 552.108 is dispositive, we do not address your arguments under section 552.103 of the Government Code.

record information that you have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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<sup>2</sup>We note, however, that if the city receives another request for information from a different requestor, the city should again seek a decision from us before releasing this information to such a requestor. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 261401

Enc. Submitted documents

c: Ms. Courtney Raquel Aguilar  
910 Jefferson  
Longview, Texas 75601  
(w/o enclosures)