



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2007

Mr. R. Kinley Heggland, Jr.
Senior Assistant City Attorney
City of Wichita falls
P. O. Box 1431
Wichita Falls, Texas 76307

OR2007-01914

Dear Mr. Heggland:

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# 271624.

The Wichita Falls Police Department (the "department") received a request for all police reports and CAD calls for two named individuals from January 1996 to December 2004. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we note that some of the submitted information, which we have marked, is not responsive to this request because it does not pertain to the named persons. The department need not release nonresponsive information in response to this request and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

Next, we note that you have redacted a social security number and Texas motor vehicle record information from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body is prohibited from withholding information from a requestor without seeking a ruling from this office unless a statute authorizes such, or the governmental body has received a previous determination for the information at issue. *See Gov't Code § 552.301(a); see also Open Records Decision No. 673 (2000)* (delineating

circumstances under which attorney general decision constitutes previous determination under section 552.301 of the Government Code). Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social security numbers without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, we are not aware of any law that authorizes the department to withhold motor vehicle record information without requesting a decision from this office. Further, you do not assert, nor does our review of our records indicate, that the department has been issued a previous determination authorizing it to withhold driver's license numbers without seeking a ruling from this office. Because we are able in this instance to ascertain the nature of the information that you have redacted, we will address whether you may withhold this information. In the future, however, the department should refrain from redacting any information that it submits to this office in seeking an open records ruling, unless the information at issue is subject to a previous determination issued by this office. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.* §§ 552.301(e)(1)(D), .302.

You assert that the submitted information is excepted under section 552.108(a)(1) of the Government Code. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, you do not explain how release of the submitted information would interfere in some way with the detection, investigation, or prosecution of crime. Thus, we find you have failed to establish that any of the submitted information is excepted under section 552.108(a)(1), and the department may not withhold any of the submitted information on that ground.

We note that the request in this instance is for unspecified law enforcement records. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, such records are private. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have submitted information in which the named individuals are not suspects, arrestees, or criminal defendants. This information is not protected by common law privacy.

Section 552.130 of the Government Code exempts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas driver's license number we have marked.

In summary, the department must withhold the information we have marked under common law privacy in conjunction with section 552.101. The department must withhold the Texas driver's license number we have marked pursuant to section 552.130. The remaining responsive information must be released.

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

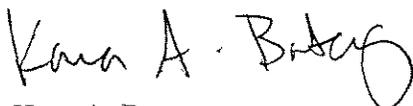
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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.

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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/krl

Ref: ID# 271624

Enc. Submitted documents

c: Ms. Beth Bailey
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(w/o enclosures)