



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2007

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2007-02751

Dear Mr. Scott:

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#273675.

The Conroe Police Department (the "department") received a request for all information regarding two named persons. You claim that the requested information is excepted from disclosure under sections 552.101, 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." This section 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 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*, 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.

In this instance, the requestor is seeking all records pertaining to two named persons. Because the requestor asks for unspecified records involving the two named persons, the request implicates the persons' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the two named persons as either a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in pertinent part:

(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:*

(2) *it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]*

Gov't Code § 552.108(a)(2). You state that an incident report in Exhibit B relates to a case that concluded in a final result other than conviction or deferred adjudication. Therefore, based upon our review, section 552.108(a)(2) is applicable to the incident report in Exhibit B that we have marked.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the remaining incident report in Exhibit B under section 552.108(a)(2).

In summary, to the extent the department maintains law enforcement records depicting the two named persons as either a suspect, arrestee, or *criminal defendant*, the department must withhold such information under section 552.101 in conjunction with common-law privacy. Except for basic information, the department may withhold the information we have marked under section 552.108(a)(2). As our ruling is dispositive, we need not address your other argument against disclosure.

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,



Lori A. Cobos
Assistant Attorney General
Open Records Division

LC/jb

Ref: ID#273675

Enc. Submitted documents

c: Ms. Kristy Pinder
16422 Hill Country
Conroe, Texas 77302
(w/o enclosures)