



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2007

Lt. Oscar J. Garcia
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2007-08116

Dear Lt. Garcia:

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# 283422.

The McAllen Police Department (the "department") received a request for information pertaining to a specified investigation, all reports for certain offenses involving two named individuals, all reports for certain offenses at two specified addresses, and all pawn shop transactions involving the two named individuals. You note that the department does not maintain some of the requested information.¹ You state that the department has released some of the requested information, including "the 'front page' offense report information." See Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the remaining 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 information.

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Attorney General Opinion H-90* (1973); *Open Records Decision Nos. 452 at 2-3* (1986), 342 at 3 (1982), 87 (1975); *see also* *Open Records Decision Nos. 572 at 1* (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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. 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. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. Furthermore, records relating to routine traffic violations are not considered criminal history record information. *Cf. Gov’t Code § 411.082(2)(B)* (criminal history record information does not include driving record information). In part, the present request requires the department to compile unspecified police records concerning the named individuals. However, the information at issue refers to the individuals solely as victims, witnesses, or involved persons or reflects routine traffic violations. Thus, none of the submitted information is confidential under common-law privacy. Therefore, the department may not withhold any of the submitted information under section 552.101 on this basis.

We next address your claim that the information that you have marked Item #1 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information that you have marked Item #1 pertains to an ongoing criminal investigation. Based upon this representation, and our review, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Accordingly, with the exception of basic information, which you

state you have released, the department may withhold the information marked Item #1 pursuant to section 552.108(a)(1) of the Government Code.

We note that the remaining information includes a Texas license plate number and Texas driver's license numbers. Section 552.130 of the Government Code excepts 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."² *Id.* § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the submitted Texas motor vehicle record information, which we have marked.

In summary, other than basic information, the department may withhold the information marked Item #1 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information, which we have marked, under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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).

²The Office of the Attorney General will raise mandatory exceptions like section 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).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eb

Ref: ID# 283422

Enc. Submitted documents

c: Mr. Scott A. Kemp
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(w/o enclosures)