



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2007

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. box 368
Houston, Texas 77002

OR2007-13524

Dear Ms. Chang:

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# 291842.

The Houston Police Department (the "department") received a request for all incident reports pertaining to two named individuals. You state you will provide the requestor with some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 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. This office has found that a compilation of an individual's criminal history record information 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 relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information).

In this instance, the requestor asks the department for unspecified law enforcement records pertaining to two named individuals, thus implicating the individuals' right to privacy. We note, however, that you have submitted information related to routine traffic violations. The department may not withhold this information on the basis of common-law privacy. Furthermore, the remaining submitted information does not list the named individuals as suspects, arrestees, or criminal defendants. Accordingly, no portion of the submitted information may be withheld on the basis of 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:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(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). 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* Gov't Code §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 6 relates to a pending criminal investigation. You also advise us that Exhibits 3 and 5 relate to criminal investigations that are inactive pending additional leads. You state, however, that the statutes of limitations have not run and these investigations may be reactivated once additional leads are developed. Thus, based on your representations and our review, we determine that the release of Exhibits 3, 5, and 6 would interfere with the detection, investigation, or prosecution of crime. We, therefore, agree that section 552.108(a)(1) is applicable to these Exhibits. *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). Next, you state that Exhibit 4 pertains to a case that concluded in a final result other than conviction or deferred adjudication. We, therefore, agree that section 552.108(a)(2) applies to Exhibit 4.¹

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

With respect to Exhibits 3 through 6, you acknowledge 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*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the basic information from Exhibits 3 through 6 must be released. The remaining information in these Exhibits may be withheld under section 552.108.

You also raise section 552.130 of the Government Code, which 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. See Gov't Code § 552.130(a)(1). The department must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, in Exhibit 2 under section 552.130.

Finally, you claim that the social security number you have highlighted in Exhibit 2 is excepted from disclosure under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department may withhold the social security number you have marked in Exhibit 2 under section 552.147.

In summary, with the exception of basic information, the department may withhold Exhibits 3 through 6 under section 552.108 of the Government Code. The department must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, in Exhibit 2 under section 552.130. The department may withhold the social security number you have marked in Exhibit 2 under section 552.147. The remaining 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

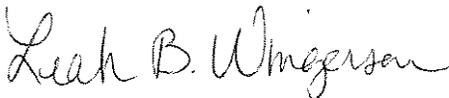
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 291842

Enc. Submitted documents

c: Ms. Dena Bass
503 West Pine Street
Lonoke, Arkansas 72086
(w/o enclosures)