



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 30, 2007

Mr. Brent A. Money  
Associate City Attorney  
Law Office of Robert L. Scott  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2007-14248

Dear Mr. Money:

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# 293070.

The Greenville Police Department (the "department"), which you represent, received a request for information pertaining to a named individual. You claim that the requested 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.

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 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. 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. After reviewing the request and the submitted documents, however, we find that the named individual's right to privacy has not been implicated by this request.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find you have failed to establish that the submitted reports consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 as "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes"). Therefore, the submitted information is not confidential under section 261.201, and the department may not withhold it under section 552.101 on that ground.

Section 552.108(a)(1) of the Government Code 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 Gov't Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report numbers 2006-00024871, 2007-00013818, 2007-00013819, 2007-00015305 and 2007-00015309 pertain to pending criminal investigations. Based upon this representation and our review, we conclude that the release of these reports 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* You state that report numbers 2006-00015884, 2007-00004927, 2007-00004931, 2007-00007341 and 2007-00007342 pertain to criminal investigations that did not result in conviction or deferred adjudication. Thus, based on your representations and our review, we conclude that section 552.108(a)(2) is applicable to these reports.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 187; Open Records Decision No. 127 (summarizing types of information considered to be basic information).

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~~With the exception of basic information, the department may withhold report numbers~~ 2006-00024871, 2007-00013818, 2007-00013819, 2007-00015305 and 2007-00015309 under section 552.108(a)(1) of the Government Code and report numbers 2006-00015884, 2007-00004927, 2007-00004931, 2007-00007341 and 2007-00007342 under section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that the basic information contains social security numbers. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>1</sup> Gov't Code § 552.147(a). We note, however, that the requestor has a right of access to her own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, the department may withhold the social security number that belongs to an individual other than the requestor under section 552.147 of the Government Code.

In summary, with the exception of basic information, the department may withhold report numbers 2006-00024871, 2007-00013818, 2007-00013819, 2007-00015305 and 2007-00015309 under section 552.108(a)(1) of the Government Code and report numbers 2006-00015884, 2007-00004927, 2007-00004931, 2007-00007341 and 2007-00007342

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

under section 552.108(a)(2) of the Government Code. The department may withhold the social security number that belongs to an individual other than the requestor under section 552.147 of the Government Code.<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).

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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

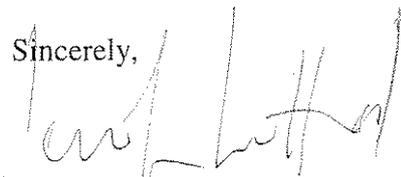
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<sup>2</sup>We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). However, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

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Ref: ID# 293070

Enc. Submitted documents

c: Ms. Valerie A. Emenheiser  
3215 Washington Street  
Greenville, Texas 75401  
(w/o enclosures)

