



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2007

Ms. Nicole Webster
Assistant City Attorney
City of Waco, Legal Services
P.O. Box 2570
Waco, Texas 76702

OR2007-14369

Dear Ms. Webster:

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 #293543.

The Waco Police Department (the "department") received a request for all computer aided dispatch ("CAD") records pertaining to a specified address and all arrest records pertaining to a named individual, including two specified arrest reports, from the past five years. You indicate that you are providing the requestor with sixteen pages of responsive information. You claim that the submitted police reports and CAD reports are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted reports are not responsive to the present request, which seeks only CAD and arrest records created within the past five years. Thus, the reports we have marked that were created in 1993, 1999, and 2000 are not responsive to this request. This ruling does not address the public availability of these reports, and the department is not required to release them in response to this request.

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. 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.

In this instance, a portion of the request concerns two specific reports. Thus, these reports are not part of a compilation of a private citizen's criminal history and may not be withheld under section 552.101 and common-law privacy. However, the requestor also asks the department to compile unspecified arrest and incident reports regarding a named individual. That aspect of the request implicates the individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than the specified reports, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy. We note that information that refers to the named individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. We have marked a report that lists the named individual as a victim; this report may not be withheld under section 552.101 in conjunction with common-law privacy. The submitted call sheets, which we also have marked, refer to a specified address rather than the named individual. Because they do not implicate the individual's privacy rights, they also must be released to the requestor. We now turn to your argument against disclosure of the two specified reports and the CAD sheets.

For the remaining information, you raise section 552.130 of the Government Code, which provides in part:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas-issued motor vehicle record information you have marked, as well as the information we have marked, under section 552.130.

In summary, to the extent the department maintains law enforcement records, other than the two specified reports, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas-issued motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The remaining information must be released to the requestor.¹

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

¹We note that this information contains social security numbers. 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.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 298543

Enc. Submitted documents

c: Ms. Rita W. Jones
308 Longhorn Parkway
Axtell, Texas 76624
(w/o enclosures)