



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-11159

Dear Mr. Phillips:

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# 319007.

The City of Fort Worth (the "city") received a request for (1) all information related to three named individuals; (2) information pertaining to a specified address from May 1, 2007 through May 1, 2008; and (3) fire report number 08-0930040. You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you are withholding social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted 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.

Initially, we note that you did not submit information responsive to the request for fire report number 08-0930040. We assume the city has released this report to the requestor. If it has not, it must do so at this time, to the extent that such report exists. *See* Gov't

¹Section 552.147(b) 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.

Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances). We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

We next address your claim under section 552.101 of the Government Code, which excepts from public 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 that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the city to compile unspecified law enforcement records concerning the individuals named in the request. Therefore, the city must withhold any criminal records where any of the named individuals is listed as a suspect, arrestee, or criminal defendant, to the extent they exist, under common-law privacy as encompassed by section 552.101 of the Government Code. We note that you have submitted records that do not list any of the named individuals as a suspect, arrestee, or defendant. These documents may not be withheld under section 552.101 in conjunction with common-law privacy.

You claim that report number 08-10592 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 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[.]

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 report number 08-10592 relates to a pending

criminal investigation being conducted by the Fort Worth Police Department (the "department"). You have also submitted an affidavit from the department affirming that the investigation is on-going and requesting that the information at issue be withheld. Based upon these representations and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to report number 08-10592. 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 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*, and includes a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). With the exception of basic information, the city may withhold report number 08-10592 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold any criminal records where any of the named individuals is listed as a suspect, arrestee, or criminal defendant, to the extent they exist, under common-law privacy as encompassed by section 552.101 of the Government Code. With the exception of basic information, the city may withhold report number 08-10592 under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we do not address your remaining argument.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 319007

Enc. Submitted documents

c: Ms. Nina LaFond
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(w/o enclosures)