



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2009

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

OR2009-01067

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# 333284 (City of Waco # LGL-08-1058).

The City of Waco (the "city") received two requests from the same requestor for information related to a specified incident and arrest of a named individual on four warrants. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. This exception 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 established. *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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You contend the requests for information require the city to compile the named individual's criminal history. We note, however, the requests are for information pertaining to specified incidents that occurred on two specified dates. Therefore, we find this is not a request for a compilation of the named individual's criminal history. Accordingly, the city may not withhold the submitted incident reports under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you claim that some of the reports are subject to section 552.108(a)(1). 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 . . . 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(a)(1) 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a representation from the Waco Police Department, that four of the submitted offense reports relate to a pending criminal cases. Based on this representation, we conclude release of those four 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). Thus, section 552.108(a)(1) is applicable to the four reports listed as pending in Exhibit 4.¹

We note, and you acknowledge, 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, front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, a detailed description of the offense. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the city may withhold the information you say is pending in Exhibit 4 under section 552.108(a)(1) of the Government Code.

Next, section 552.130 of the Government Code excepts from disclosure "information [that] 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). Accordingly, the city must withhold the Texas driver's license information and Texas motor vehicle record information you have highlighted, as

¹As our ruling on this information is dispositive, we need not address your claim under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

well as the additional information we have marked in the remaining information, under section 552.130 of the Government Code.

In summary, with the exception of basic information, the city may withhold the four reports related to pending cases under section 552.108(a)(1) of the Government Code. The city must withhold the highlighted Texas driver's license information and Texas motor vehicle record information, as well as the information we have marked, under section 552.130 of the Government Code. The remaining information must be released.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 333284

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Section 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. Gov't Code § 552.147.