



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2009

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.  
1800 Lincoln Plaza  
Dallas, Texas 75201

OR2009-02339

Dear Mr. Hager:

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# 335562.

The Rowlett Police Department (the "department"), which you represent, received a request for all incident reports between January 1995 and January 2007 involving a named individual. You claim the submitted incident reports are excepted from disclosure under sections 552.101, 552.103, 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 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 if it (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. The present request requires the department to compile unspecified criminal history records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records 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.<sup>1</sup> We note you have submitted report numbers 00018170, 06009060, 00003660, 00036936, and 05009845, which pertain to the named individual, but do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, we will address your claims under sections 552.103 and 552.108 for these reports.

You contend report number 00018170 is excepted under section 552.103, which provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

---

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

Although you state report number 00018170 pertains to a pending criminal case, we note the department would not be a party to any pending and anticipated prosecution of this case, and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Moreover, you have not provided this office with an affirmative representation from any governmental body with a litigation interest that the governmental body seeks to withhold report number 00018170 pursuant to section 552.103. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, the department may not withhold report number 00018170 under section 552.103 of the Government Code.

You also contend report number 00018170 is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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[.]” *Id.* § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 00018170 pertains to a pending criminal case. We note, however, this report involves an alleged assault that occurred in May 2000. It is unclear whether the assault was a misdemeanor or felony. Regardless, the Crim. Proc. Code arts. 12.02 (misdemeanors subject to two year limitations period), 1 statutes of limitations for either type of offense are two years and three years, respectively. *See* 2.01(6) (limitations for all other felony offenses not listed in subsections (1) through (5) is three years from date of offense). More than three years have elapsed since the events giving rise to the investigation in report number 00018170, and you have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, incident report number 00018170 may not be withheld under section 552.108(a)(1) of the Government Code.

You assert report numbers 06009060 and 00003660 are also excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if 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)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.*

§ 552.301(e)(1)(A); 551 S.W.2d 706. You assert report numbers 06009060 and 00003660 pertain to concluded criminal investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to report numbers 06009060 and 00003660.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which includes a detailed description of the offense, the department may withhold report numbers 06009060 and 00003660 under section 552.108(a)(2) of the Government Code.<sup>2</sup> We note the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

We note the remaining information contains Texas motor vehicle record information. Section 552.130 of the Government Code 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[.]”<sup>3</sup> *Id.* § 552.130(a)(1). Thus, the department must withhold the Texas motor vehicle record information we have marked in report numbers 00018170, 00036936, and 05009845 under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records 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. With the exception of basic information, the department may withhold report numbers 06009060 and 00003660 under section 552.108(a)(2) of the Government Code. The department must withhold the Texas motor vehicle record information we have marked in report numbers 00018170, 00036936, and 05009845 under section 552.130 of the Government Code. The remaining information must be released.<sup>4</sup>

---

<sup>2</sup>We note basic information includes an arrestee’s social security number. 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.

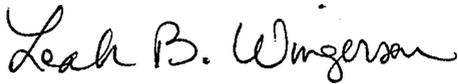
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note the remaining information contains social security numbers, which may be withheld under section 552.147(b) of the Government Code.

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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 335562

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)