



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 23, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-03745

Dear Ms. Chang:

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# 338881.

The Houston Police Department (the "department") received a request for "the most detailed incident-level data available," for every crime committed during a specified time period, specifically including eight categories of information. You claim that the information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the representative sample of information you have submitted.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that a person may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the department has previously allowed him to review some of the requested information. The requestor argues because the department has previously released information relevant to the present request, the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

department may not now treat the requested information as confidential. Section 552.007 of the Government Code generally prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See id.* § 552.007. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See id.*; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision Nos. 490 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). In this instance, the department raises section 552.101 of the Government Code, which governs information considered to be confidential by law. *See Gov't Code* § 552.101. Thus, regardless of whether the department previously released any of the information at issue in this request, we must address whether the submitted information is made confidential by law and must now be withheld pursuant to section 552.101 of the Government Code.

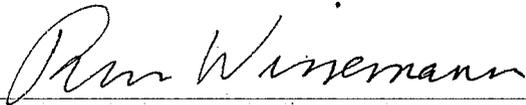
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Gov't Code* § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue that because the requestor is asking for the name, sex, age, date of birth, and other information for every crime committed from 2006 to 2008, that release of the information would amount to releasing a de facto criminal history of all suspects, arrestees, and defendants during this time period and would violate several individuals' common-law right to privacy. However, we note that the present request is for information regarding all crimes from 2006 to 2008 and does not require the department to compile any individual's criminal history. Thus, the requested records are not a compilation of an individual's criminal history and the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As you have raised no further exceptions to disclosure, the requested information must be released.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/sdk

Ref: ID# 338881

Enc. Submitted documents

c: Requestor
(w/o enclosures)