



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76720-2570

OR2009-05812

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# 341560 (City of Waco Reference # LGL-09-152).

The Waco Police Department (the "department") received a request for all information related to a specified individual and address. You state that a portion of the information will be made available to the requestor. You claim that the submitted 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 public 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 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *See 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, in part, requires the department to compile unspecified law enforcement records concerning the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, any such information is protected by common-law privacy, and the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note that you have submitted information that does not relate to the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, the department may not withhold it in its entirety under section 552.101 on that basis. Portions of this information, however, may be excepted from disclosure under common-law privacy. Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note that the department has marked the originating telephone numbers of 9-1-1 callers from the submitted 9-1-1 call sheets, and you seek to withhold these numbers under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. See Open Records Decision No. 649 (1996). We understand the City of Waco to be part of an emergency communication district that was established under section 772.318.¹ You indicate that the telephone numbers that you have marked are related to 9-1-1 calls and were obtained from a 9-1-1 service provider. However, we note you have marked multiple telephone numbers on some of the 9-1-1 call reports. It is unclear which of these telephone numbers are the originating telephone numbers provided by a 9-1-1 service supplier. Thus, to the extent the telephone numbers you have marked, in addition to the telephone numbers and addresses we have marked, are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, to the extent any of the

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

remaining marked information was not supplied by a 9-1-1 service provider, section 772.318 is not applicable to this information and it may not be withheld on that basis.

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 that report number 07-8084 relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of the information in that report 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.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report number 07-8084 under section 552.108(a)(1) of the Government Code.²

We note that a portion of the remaining information on the submitted 9-1-1 call sheets is subject to section 552.130 of the Government Code.³ Section 552.130 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 or a motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, to the extent the department maintains law enforcement records depicting the named individual as either 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 information we

²As our ruling on this report is dispositive, we need not address your remaining argument against release of this information.

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

have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, the department must withhold the telephone numbers you have highlighted, in addition to the phone numbers and addresses we have marked, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Except for basic information, the department may withhold report number 07-8084 under section 552.108(a)(1) of the Government Code. The department must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 341560

Enc. Submitted documents

c: Requestor
(w/o enclosures)