



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2009

Mr. Robert Massey
Assistant City Attorney
City of Wichita Falls Legal Department
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-07272

Dear Mr. Massey:

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# 346247.

The Wichita Falls Police Department (the "department") received a request for information related to a specified address and a named individual over a specified date range. You state that the department will release some information. You claim portions of the submitted information are 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 section 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. *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, 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 police 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, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by other statutes, including section 550.065 of the Transportation Code. The submitted information includes a CRB-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with the information specified in section 550.065(c)(4). Therefore, the department must withhold the submitted CRB-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.¹

Section 552.108(a)(2) 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 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that reports 05-110489 and 06-071281 relate to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree that section 552.108(a)(2) is generally applicable to these two reports.

However, 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 Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976), including a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the detailed description of the offense from report 05-110489,

¹As our ruling is dispositive with regard to this portion of the submitted information, we need not address your remaining arguments against disclosure of this information.

which you have marked, is excepted from disclosure by section 552.101 in conjunction with common-law privacy. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See Indus. Found.*, 540 S.W.2d at 683. Upon review, we conclude that the information you have marked in report 05-110489 is not highly intimate or embarrassing. Thus, the department may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, and must release it under section 552.108(c) as basic information. Therefore, with the exception of basic information, the department may withhold reports 05-110489 and 06-071281 under section 552.108(a)(2) of the Government Code.

In summary: (1) to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the submitted CRB-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (3) the department may withhold reports 05-110489 and 06-071281 under section 552.108(a)(2) of the Government Code, but must release basic information from each of these reports pursuant to section 552.108(c); and (4) the department must release the remainder of the submitted information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/cc

Ref: ID# 346247

Enc. Submitted documents

cc: Requestor
(w/o enclosures)