



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2009

Chief Brett Colston  
Assistant Chief of Police  
Waxahachie Police Department  
216 North College  
Waxahachie, Texas 75165

OR2009-08152

Dear Chief Colston:

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# 350410.

The Waxahachie Police Department (the "department") received a request for information relating to a named individual, including records of specified incidents. You inform us that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note that section 552.101 of the Government Code is applicable in this instance.<sup>1</sup> Section 552.101 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

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<sup>1</sup>Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).*

demonstrate the applicability of common-law privacy, both elements of the 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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Except for the submitted call for service record, the requestor seeks access to unspecified law enforcement records involving the named individual. That aspect of this request requires the department to compile the named individual's criminal history and implicates his privacy interests. Therefore, to the extent that the department maintains any information other than the call for service record that depicts the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

Next, we address your claim under section 552.108 of the Government Code for the call for service record. 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the call for service record is related to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable to the call for service record.

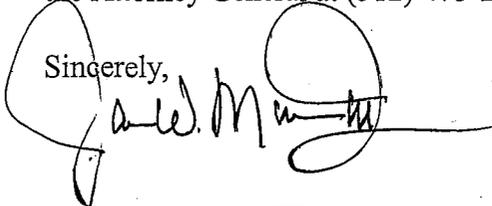
Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, 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*). The department may withhold the rest of the information in the call for service record under section 552.108(a)(2).

In summary: (1) to the extent that the department maintains any information other than the call for service record that depicts the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the department may withhold the call for service record under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we do not address the other exceptions you claim.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 350410

Enc: Submitted documents

c: Requestor  
(w/o enclosures)