



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2009

Mr. Eloy Padilla
Assistant City Attorney
City of Del Rio
109 West Broadway Street
Del Rio, Texas 78840

OR2009-11193

Dear Mr. Padilla:

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# 351974.

The City of Del Rio (the "city") received a request for all police reports relating to three named individuals and three specific entities.¹ You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.136² of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

¹ We note the city sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

² While you raise section 552.110 of the Government Code for your argument to withhold bank account and routing numbers, we understand you to raise section 552.136 of the Government Code as this is the proper exception for the substance of your argument.

³ Although the city also claims that the requested information is excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

Initially, we understand you to claim that some of the submitted information is not responsive to the request. The request seeks police reports pertaining to three named individuals and three entities. You state a portion of the information contained in these reports is "unrelated and unresponsive" to this request. We note that a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We find that the submitted information consists of police reports that relate to the individuals and entities mentioned in the request. Therefore, we conclude the police reports are responsive to the request in their entirety. Thus, we will examine the arguments for their exception from disclosure under the Act.

Next, you acknowledge that the city has failed to comply with the requirements of section 552.301 of the Government Code with respect to requesting a ruling from this office. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code, which you claim, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the city may not withhold any of the submitted information under section 552.108. However, sections 552.130 and 552.136 of the Government Code can provide compelling reasons for non-disclosure under section 552.302. In addition, section 552.101 can provide a compelling reason for non-disclosure.⁴ Accordingly, we will address whether the submitted information is excepted from disclosure under these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of 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)

⁴ 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).

is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that 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). 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, seeks a copy of all police reports for three named individuals. We find that this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

However, we note you have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the named individuals' privacy concerns and may not be withheld under section 552.101 on this basis. Accordingly, we will address your arguments for this 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 [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.⁵

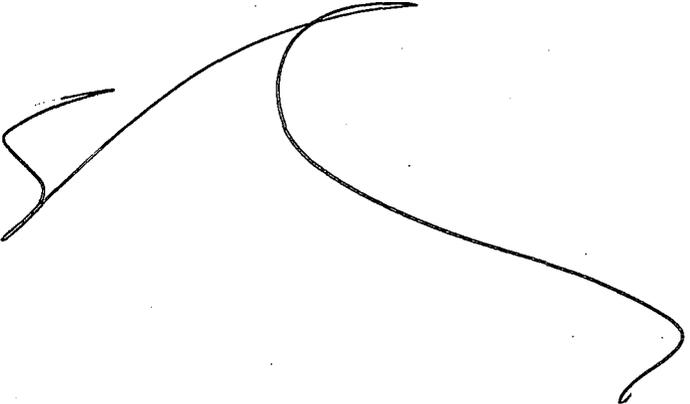
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 351974

Enc. Submitted documents

cc: Requestor
(w/o enclosures)