



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-11483

Dear Ms. Byles:

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# 352489 (PIR No. 3843-09).

The City of Fort Worth (the "city") received a request for information relating to a specified case number and a named individual. You state that the city has redacted a social security number pursuant to section 552.147 of the Government Code and Texas motor vehicle record information pursuant to previous determinations issued to the city under section 552.130 of the Government Code.<sup>1</sup> See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). You claim that the rest of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the submitted information consists of three incident reports. The requestor specifically seeks access, however, only to report number 08-139463. Therefore, the other two submitted reports are not responsive to this request for information. This decision does not address the public availability of any information that is not responsive to this request, and the city need not release such information in response to the request.

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<sup>1</sup>We note that section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Next, we address your exceptions to disclosure of the responsive 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. You raise section 552.101 in conjunction with 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 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.

You contend that compliance with this request for information would require the city to compile individuals' criminal histories. We note, however, that the requestor specifically seeks access to information relating to a single specified case number. Thus, this request neither requires the city to compile unspecified law enforcement records nor implicates any individual's right to privacy. Therefore, the city may not withhold any of the responsive information on that basis under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 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). 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 inform us, and have provided an affidavit from the Tarrant County District Attorney's Office stating, that the responsive information is related to a pending prosecution. Based on your representation and the affidavit, we conclude that section 552.108(a)(1) is generally applicable to the responsive information. *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 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

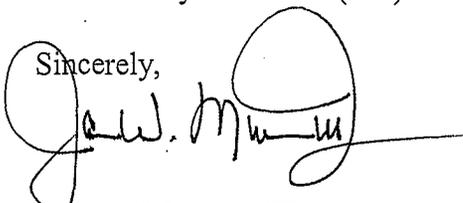
Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-

page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Basic information includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the submitted information is related to an alleged sexual assault. Thus, the city would ordinarily be required to withhold the identity of the alleged sexual assault victim from the public under section 552.101 in conjunction with common-law privacy. See Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the responsive information identifies the victim by means of a pseudonym. Therefore, the city must release basic information in accordance with section 552.108(c). The city may withhold the rest of the responsive information under section 552.108(a)(1) of the Government Code. As we are able to make these determinations, we do not address your other arguments against disclosure.

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 'J.W. Morris, III', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

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

JWM/cc

Ref: ID# 352489

Enc: Submitted documents

c: Requestor  
(w/o enclosures)