



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2009

Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-12144

Dear Ms. Villarreal:

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# 353750 (Waco Reference # LGL-09-613).

The City of Waco (the "city") received a request for copies of any citations, infractions, tickets, warnings, and incident or offense reports pertaining to a named individual. You state that basic information has been released to the requestor.¹ 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 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 reasonably 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 satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is

¹We assume that the basic information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code §552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

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. We note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf. Gov't Code § 442.082(2)(B)* (criminal history record information does not include driving record information).

We note that the city has only submitted records which relate to routine traffic violations or which only identify the named individual as a victim. Thus, none of the submitted information implicates the named individual's privacy under section 552.101 of the Government Code and it may not be withheld on this basis. Accordingly, we will address your remaining arguments against disclosure of this information.

Section 552.101 also encompasses information made confidential by statute. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649* (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand that the city is part of an emergency communication district established under section 772.318. You have marked the telephone number of a 9-1-1 caller that the city seeks to withhold under that section. Provided that it was furnished by a 9-1-1 service supplier, we agree that the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The remaining information in the submitted call report must be released to the requestor.

Next, you claim that the information you have marked is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.*

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal case. Based on this representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to the marked 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). Accordingly, you may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

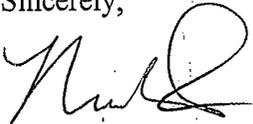
You seek to withhold Texas motor vehicle information in the remaining information at issue under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle information you have marked under section 552.130.

In summary, the city must withhold the telephone number it has marked under 552.101 in conjunction with section 772.318 of the Health and Safety Code provided it was furnished by a 9-1-1 service provider. The city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the Texas motor vehicle information you have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eeg

Ref: ID# 353750

Enc. Submitted documents

cc: Requestor
(w/o enclosures)