



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-16845

Dear Ms. Webster:

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# 367630 (Waco reference # LGL-09-1165).

The Waco Police Department (the "department") received a request for any and all police reports pertaining to a named individual, including a specified report. You state the department has released some information to the requestor. 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 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)

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. *Id.* at 681-82. 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. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

In this instance, the request is for any and all police reports pertaining to a named individual, including a specified report. Thus, this request, in part, requires the department to compile the named individual's criminal history. Therefore, with the exception of the specified report, 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 in conjunction with common-law privacy.

We note that you have submitted report number 07-29114, which does not list the named individual as a suspect, arrestee, or criminal defendant. Accordingly, report number 07-29114 does not implicate the privacy interests of the named individual and may not be withheld in its entirety based on common-law privacy. You have also submitted report number 09-22096. Because report number 09-22096 was specifically requested by the requestor, it does not implicate the privacy interests of the named individual and it may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. However, we will address your remaining arguments against the disclosure of report numbers 07-29114 and 09-22096.

You claim that report number 09-22096 is excepted under section 552.108(a)(1) 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). Generally, 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 report number 09-22096 relates to a pending criminal investigation. Based upon your representation and our review, we conclude that the release of report number 09-22096 would interfere with the detection, investigation, or prosecution of crime. *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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law

enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to report number 09-22096.

However, as you acknowledge, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been released, the department may withhold report number 09-22096 under section 552.108(a)(1) of the Government Code.¹

Next, you have marked some information in report number 07-29114 under section 552.130 of the Government Code, which 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[.]" Gov't Code § 552.130(a)(1). Upon review, we find that the department must withhold the Texas driver's license number that you have marked in report number 07-29114 under section 552.130 of the Government Code.

In summary, with the exception of the specified report, 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. With the exception of basic information, which must be released, the department may withhold report number 09-22096 under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked in report number 07-29114 under section 552.130 of the Government Code. The remaining information in report number 07-29114 must be released.²

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,

¹As our ruling is dispositive, we need not address your remaining argument against the disclosure of portions of these reports.

²We note report number 07-29114 also contains a social security number. Section 552.147(b) of the Government Code 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. Gov't Code § 552.147.

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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 367630

Enc. Submitted documents

c: Requestor
(w/o enclosures)