



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2009-18011

Dear Ms. Sandoval-Walker:

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# 364695.

The El Paso Police Department (the "department") received a request for law enforcement records pertaining to a named individual at a specified address. You claim that the submitted information is excepted from disclosure under section 552.101 and 552.108 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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. 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. In this instance, the requestor asks the department to compile unspecified law enforcement records pertaining to a named individual at a specified address. We note that a request for all law enforcement records pertaining to a specified address does not implicate any privacy interest. However, the request for all records involving a named individual implicates the individual's right to privacy. Thus, 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 the department has submitted records to this office that do not depict the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, we will address your arguments against release of this information.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. See also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, some of the submitted information relates to an investigation of a sexual assault. Because the requestor knows the identity of the victim, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, we conclude the department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual at issue and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. You also seek to withhold the remaining incident reports in their entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, that the remaining reports pertain to situations where they must be withheld in their entirety on the basis of common-law privacy. Accordingly, the remaining reports may not be withheld in

their entirety under common-law privacy. However, we have marked information within these reports that must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) 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 state that report number 09-130160 is currently pending prosecution with the El Paso District Attorney’s Office (the “district attorney”). In support, you submit a letter from the district attorney stating release of report number 09-130160 would interfere with the prosecution of the case. You also state that report number 09-188092 relates to a pending criminal investigation in the department. Based on your representation, we conclude that section 552.108(a)(1) is applicable to report numbers 09-130160 and 09-188092. *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. The department must release basic information 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*). With the exception of basic information, the department may withhold report numbers 09-130160 and 09-188092 under section 552.108(a)(1).

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold these records under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Except for basic information, the department may withhold report numbers 09-188092 and 09-130160 under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.<sup>1</sup>

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<sup>1</sup>We note that the information being released contains social security numbers. 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.

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, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/sdk

Ref: ID# 364695

Enc. Submitted documents

c: Requestor  
(w/o enclosures)