



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2010

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 S. Lamar
Dallas, Texas 75215

OR2010-00236

Dear Ms. Armstrong:

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# 366472 (Dallas Request No. 2009-5793).

The Dallas Police Department (the "department") received a request for a specified incident report. 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.

We note, and you acknowledge, that the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b). The department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e)(1). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception 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 Gov't Code § 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us that the Dallas County District Attorney's Office (the "district attorney") asserts a law enforcement interest in some of the information at issue. Therefore, we will determine whether the department may withhold that information on behalf of the district attorney under section 552.108. Additionally, we will consider your claims under sections 552.101 and 552.130 of the Government Code, which also can provide compelling reasons for non-disclosure under section 552.302.

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 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. *See 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. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must withhold the information we have marked 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 claiming section 552.108 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 the district attorney objects to release of the information at issue because it relates to a pending criminal prosecution. Based on this representation, we conclude that the release of this information 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1).

Section 552.130 of the Government Code exempts 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(a)(1), (2). Accordingly, the department must withhold the information you have marked pursuant to section 552.130.¹

In summary, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The department may withhold the information you marked under section 552.108(a)(1). The department must withhold the information you marked under section 552.130. 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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 366472

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹ We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.