



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2010

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
Attorney for Town of Flower Mound  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-02162

Dear Mr. Griffith:

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# 370312.

The Town of Flower Mound (the "town"), which you represent, received a request for all records pertaining to the requestor or either of two named individuals. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 courthouses 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, requires the town to compile unspecified criminal history records concerning two individuals other than the requestor. This portion of the request implicates these individuals' rights to privacy. Therefore, to the extent the town maintains law enforcement records depicting either of the two named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 in conjunction with common-law privacy.

You have submitted records that do not list either of the two named individuals other than the requestor as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, the town may not withhold it under section 552.101 on that basis. However, you raise section 552.108 of the Government Code for this information. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You assert submitted report numbers 09-5528, 07045828, and 07045838 pertain to closed investigations that did not result in conviction or deferred adjudication. Based on your representations, we agree section 552.108(a)(2) is applicable to the reports at issue.

We note 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 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense information, you may withhold report numbers 09-5528, 07045828, and 07045838 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the town maintains law enforcement records depicting either of the two named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 in conjunction with

common-law privacy. Apart from basic information, the town may withhold report numbers 09-5528, 07045828, and 07045838 under section 552.108(a)(2) of the Government Code.

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/rl

Ref: ID# 370312

Enc. Submitted documents

c: Requestor  
(w/o enclosures)