



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2010

Ms. Kristy Ashberry.  
City Secretary  
City of Rockwall  
385 Goliad  
Rockwall, Texas 75087

OR2010-02738

Dear Ms. Ashberry:

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# 371166.

The Rockwall Police Department (the "department") received a request for copies of incident reports involving named individuals at a specified address between specified dates. 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.

Initially, we note report 2009-11734 is not responsive to the instant request because it does not fall within the dates specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from public 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 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. 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). Moreover, 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 department to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You submitted seven responsive reports that do not list the named individuals as suspects, arrestees, or criminal defendants. We note report number 2009-26316 concerns an alleged sexual assault. Common-law privacy protects information that either identifies or tends to identify a victim of sexual assault or other sex-related offense. *See* Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982). However, a governmental body is required to withhold an entire report when this identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Because of the nature of the request in this instance, withholding the victim's identifying information would not preserve the victim's common-law right to privacy. Accordingly, the report number 2009-26316 must be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

You assert the remaining responsive reports are 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 2009-26723, 2009-27335, 2009-27667, 2009-28041, 2009-27685, and 2009-27681 pertain to matters which are still under investigation and that the release of these reports would interfere with the ongoing investigation and future prosecution of these matters. Based upon your representations and our review, we determine the release of report numbers 2009-26723, 2009-27335, 2009-27667, 2009-28041, 2009-27685, and 2009-27681 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude section 552.108(a)(1) is applicable to report numbers 2009-26723, 2009-27335, 2009-27667, 2009-28041, 2009-27685, and 2009-27681.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold report numbers 2009-26723, 2009-27335, 2009-27667, 2009-28041, 2009-27685, and 2009-27681 under section 552.108(a)(1).

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 2009-26316 under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold report numbers 2009-26723, 2009-27335, 2009-27667, 2009-28041, 2009-27685, and 2009-27681 under section 552.108(a)(1).

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 371166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)