



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 12, 2010

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2010-05088

Dear Ms. Alvarez:

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# 376749.

The City of Kingsville (the "city") received a request for police reports pertaining to a specified address during a specified time period. You claim portions of the submitted information are 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). We note 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.

You contend the present request for information requires the city to compile the criminal history of individuals. We note, however, the request is for information pertaining to a specified address. As such, we find the request is not a request for a compilation of any individual's criminal history and does not implicate any individual's right to privacy. Therefore, the six incident reports you have marked may not be withheld under section 552.101 in conjunction with common-law privacy. As you raise no other exceptions against disclosure of incident report number 09-004460, it must be released.

Section 552.108(a)(1) of the Government Code exempts 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.* §§ 552.108, 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report numbers 09-003773, 09-004311, 09-005021, 09-005490, and 10-000223 relate to pending criminal investigations or prosecutions. Based on your representation, we conclude the release of these reports 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 agree section 552.108(a)(1) applies to incident report numbers 09-003773, 09-004311, 09-005021, 09-005490, and 10-000223.

Section 552.108(a)(2) of the Government Code exempts 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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *Id.*; *see id.* § 552.301(e)(1)(A). You inform us incident report number 09-004955 pertains to "rejected misdemeanor" charges and state this report relates to a police investigation "that has not yet resulted in a conviction or deferred adjudication" (emphasis added). We note section 552.108(a)(2) is applicable only if the information at issue is related to a *concluded* criminal case "that did not result in conviction or deferred adjudication." *Id.* § 552.108(a)(2). Thus, having considered your representations, we find you have not demonstrated incident report number 09-004955 falls within the scope of section 552.108(a)(2). We therefore conclude the city may not withhold incident report number 09-004955 under section 552.108(a)(2). As you raise no other exceptions against disclosure of incident report number 09-004955, it must be released.

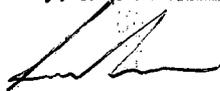
Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold incident report numbers 09-003773, 09-004311, 09-005021, 09-005490, and 10-000223 under section 552.108(a)(1).¹

In summary, except for basic information, the city may withhold report numbers 09-003773, 09-004311, 09-005021, 09-005490, and 10-000223 under section 552.108(a)(1) of the Government Code. The city must release the remaining information.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 376749

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive for this information, we need not address your argument against the release of portions of this information.