



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 13, 2010

Chief Don Hatcher  
City of Leander Police Department  
705 Leander Drive  
Leander, Texas 78641

OR2010-05218

Dear Chief Hatcher:

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# 376159.

The Leander Police Department (the "department") received two requests from the same requestor, the first for records relating to the arrest of a named individual on a specified date and the second for records relating to any other criminal incidents regarding the named individual in 2009. You state you have released some information to the requestor in response to the first request. You state the department will redact certain Texas motor vehicle record information under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You further state the department has redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim the submitted information

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<sup>1</sup>This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>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.

is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include CR-3 crash reports completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the required pieces of information. Thus, the department must withhold the CR-3 accident reports from the requestor under section 550.065(b) of the Transportation Code.

You assert the request for any reports relating to the named individual implicates the individual's right to privacy. 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. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See 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. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683. A compilation of an individual's criminal history is also 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You argue the second request requires the department to compile unspecified law enforcement records concerning the individual at issue. However, upon review, we find the information at issue does not list this individual as a suspect, arrestee, or criminal defendant. We therefore conclude none of the submitted information may be withheld under section 552.101 as a compilation of criminal history.

You raise section 552.108 for the information responsive to both requests. ~~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). Generally, a governmental body claiming section 552.108(a)(1) 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 submitted information relates to pending criminal investigations and its release would interfere with the investigations of these crimes. Based upon your representation and our review, we find that section 552.108(a)(1) is applicable to the information responsive to the first request and to the information concerning case no. 310921 and call for service no. 140136 for the information responsive to the second request. *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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). However, we find you have failed to demonstrate how release of the remaining information would interfere with the detection, investigation, or prosecution of crime, and it may not be withheld on this basis.

We note, and you acknowledge, 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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Therefore, except for basic information, a portion of which you state you have released, the department may withhold the information responsive to the first request and the information concerning case no. 310921 and call for service no. 140136 under section 552.108(a)(1) of the Government Code.

We note some of the remaining information may fall under section 552.1175 of the Government Code.<sup>3</sup> Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

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<sup>3</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).*

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). The submitted information includes personal information of peace officers who are not department employees. To the extent these individuals are currently licensed peace officers who elect with the department to restrict public access to their personal information, the department must withhold the information we have marked under section 552.1175. To the extent either of these individuals is not a currently licensed peace officer who elects with the department to restrict public access to their personal information, the department may not withhold information pertaining to that individual under section 552.1175. We note the submitted video recordings for call for service no. 140959 contain information subject to section 552.1175. You inform us the department does not have the technical capability to redact information from the recordings. Therefore, to the extent these individuals are currently licensed peace officers who elect with the department to restrict public access to their personal information, the department must withhold these recordings in their entirety under section 552.1175 of the Government Code.

We further note the remaining information contains additional Texas motor vehicle record information excepted from disclosure under section 552.130. *See* Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. Additionally, you state the remaining video and audio recordings contain information subject to section 552.130. You inform us the department does not have the technical capability to redact the Texas motor vehicle record information from these recordings. Therefore, the department must withhold these recordings in their entirety under section 552.130 of the Government Code.

In summary, the department must withhold the CR-3 accident reports under section 550.065(b) of the Transportation Code. Except for basic information, the department may withhold the information responsive to the first request and the information concerning case no. 310921 and call for service no. 140136 under section 552.108(a)(1) of the Government Code. To the extent the individuals whose information is at issue are currently licensed peace officers who elect with the department to restrict public access to their personal information, the department must withhold the information we have marked and the video recordings for call for service no. 140959 in their entirety under section 552.1175 of the Government Code. The department must withhold the Texas motor vehicle record information we have marked and the remaining video and audio recordings in their entirety under section 552.130 of the Government Code. 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 376159

Enc. Submitted documents

c: Requestor  
(w/o enclosures)