



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-05268

Dear Ms. Sandoval-Walker:

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# 376417.

The El Paso Police Department (the "department") received a request for calls, incidents, and arrests during a specified period of time pertaining to a named individual. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the named individual. This decision does not address the public availability of the non-responsive information, and the department need not release that information in response to this request.

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 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). This office has found that a compilation of an individual's criminal history is

¹Although the department does not specifically raise section 552.101, we understand you to raise this exception based on the substance of your arguments.

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. The present request seeks information pertaining to a named individual. We find that this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note, however, that you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and thus does not implicate the individual's right to privacy. Accordingly, we will address your arguments for this information.

Next, we note the submitted information contains a CR-3 accident report. Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). You inform us that the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You claim that report number 06-237348 is excepted under section 552.108(a)(1) 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). 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 inform us, and have provided documentation from the El Paso District Attorney's Office reflecting, that report number 06-237348 relates to a pending criminal prosecution. Based upon your representation and our review, we conclude that the release of report number 06-237348 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). Thus, section 552.108(a)(1) is applicable to report number 06-237348.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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*). Thus, with the exception of basic information, which must be released, the department may withhold report number 06-237348 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, 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 the CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, the department may withhold report number 06-237348 under section 552.108(a)(1) of the Government Code. As you raise no further exceptions for the remaining responsive information, it must be released to the requestor.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 376417

Enc. Submitted documents

c: Requestor
(w/o enclosures)