



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2010

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

OR2010-05753

Dear Ms. Ashbury:

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# 376719.

The Rockwall Police Department (the "department") received a request for all police reports pertaining to a named individual, including specified incidents in August 2009. You claim the submitted information is excepted from disclosure under sections 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, seeks any records pertaining to a named individual. This aspect of the request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than the specified incidents in August 2009, listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold this information under section 552.101 in conjunction with common-law privacy. We note you have submitted reports relating to the incidents specified by the requestor. Incident report numbers 2009-00020396, 2009-00020894, 2009-00021801, and 2009-00030200 are not part of a criminal history compilation. Therefore, we will address your arguments against disclosure of incident report numbers 2009-00020396, 2009-00020894, 2009-00021801, and 2009-00030200.

Section 552.108 (a)(1) of the Government Code 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.* §§ 552.108 (a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the matters at issue are under investigation and release of the information would interfere with the future prosecution and ongoing investigation of the matters. Based on your representations, we conclude the release of incident report numbers 2009-00020396, 2009-00020894, 2009-00021801, and 2009-00030200 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 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 incident report numbers 2009-00020396, 2009-00020894, 2009-00021801, and 2009-00030200.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may

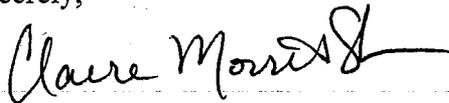
withhold incident report numbers 2009-00020396, 2009-00020894, 2009-00021801, and 2009-00030200 under section 552.108(a)(1).

In summary, to the extent the department maintains law enforcement records, other than the specified incidents in August 2009, listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold this information under section 552.101 in conjunction with common-law privacy. With the exception of the basic information, the department may withhold incident report numbers 2009-00020396, 2009-00020894, 2009-00021801, and 2009-00030200 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 376719

Enc. Submitted documents

c: Requestor
(w/o enclosures)