



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2010

Commander Doug Sandifer  
Burleson Police Department  
225 West Renfro  
Burleson, Texas 76028

OR2010-06040

Dear Mr. Sandifer:

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# 377419.

The City of Burleson (the "city") received a request for any reports concerning specified addresses, the requestor, and another named individual. You state the city has released some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

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. This exception 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 demonstrated. *Id.* at 681-82. 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The requestor seeks law enforcement records involving herself and a named individual. We find this aspect of the request is not a request for unspecified law enforcement records. Because report numbers 08-56441, 09-027378 and 09-027525 involve the requestor and the named individual, they may not be withheld as part of a criminal history compilation. Accordingly, we will address your additional arguments against the disclosure of these reports. However, to the extent the requestor also seeks law enforcement records concerning only the named individual, we find such a request implicates the named individual's right to privacy. Therefore, to the extent the city maintains other records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold this information under section 552.101 in conjunction with common-law privacy.

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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 09-027378 and 09-027525 pertain to pending cases in the Johnson County Attorney's Office and that release would interfere with the prosecution of crime. Based upon your representations and our review, we determine 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 [14<sup>th</sup> 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 09-027378 and 09-027525.

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 city may withhold report numbers 09-027378 and 09-027525 under section 552.108(a)(1).

The remaining report, report number 08-56441, contains information that is confidential by statute. Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI"). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests,

detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Sections 411.083(b)(1) and 411.089 (a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b)(1). Upon review, we find the listed Federal Bureau of Investigation (“FBI”) number constitutes CHRI generated by the FBI which must be withheld pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Report number 08-56441 also contains Texas motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency.<sup>1</sup> Gov’t Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas driver’s license number, class type, and license plate number we marked under section 552.130.<sup>2</sup>

In summary, with the exception of basic information, the city may withhold report numbers 09-027378 and 09-027525 under section 552.108(a)(1). The city must withhold the FBI number we marked in report number 08-56441 under section 552.101 in conjunction with section 411.083 of the Government Code. The city must withhold the Texas driver’s license number, class type, and license plate number we marked in report number 08-56441 under section 552.130. The remaining information in report number 08-56441 must be released.<sup>3</sup> To the extent the city maintains other records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

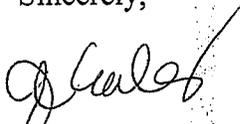
<sup>2</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a Texas driver’s license number and license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the remaining information contains a social security number. 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. Gov’t Code § 552.147.

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# 377419

Enc. Submitted documents

c: Requestor  
(w/o enclosures)