



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2010

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-06543

Dear Ms. Aguilar:

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# 378403.

The Corpus Christi Police Department (the "department") received a request for all police reports listing the requestor's client and another named individual as victims or offenders during a specified period of time. We note you have redacted a Texas drivers license number under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that portions of the submitted information are 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.

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 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 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we note that section 552.023 of

the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. In this instance, the requestor asks for a compilation of criminal history pertaining to her client and another named individual. As her client's representative, the requestor has a right of access to her client's criminal history. The request also requires the department to compile unspecified law enforcement records concerning the other named individual, who is not the requestor's client, and thus implicates this individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual who is not the requestor's client as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

However, we note that you have submitted information in which the named individual at issue is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation of the named individual at issue and does not implicate this individual's right to privacy. Thus, we will address your other arguments with regard to this information.

Common-law privacy also includes the types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. *See Indus. Found.*, 540 S.W.2d at 683. Upon review, we find that the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case numbers 0908250002, 1001120010, and 1002120020 relate to pending criminal investigations and prosecutions. Based on this representation and our review, we conclude the department may withhold the information you marked in case numbers 0908250002, 1001120010, and 1002120020 under section 552.108(a)(1) of the Government Code. *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).

Section 552.108(a)(2) excepts 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). You state that case number 0903260026 relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that the department may withhold the information you have marked in case number 0903260026 under section 552.108(a)(2).¹

In summary, to the extent the department maintains law enforcement records depicting the named individual who is not the requestor’s client 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 information you have marked under section 552.101 in conjunction with common-law privacy. The department may withhold the information you have marked in case numbers 0908250002, 1001120010, and 1002120020 under section 552.108(a)(1) of the Government Code and in case number 0903260026 under section 552.108(a)(2) 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, 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

¹As our ruling is dispositive, we need not address your argument under section 552.108(b)(2) of the Government Code for this information.

Ref: ID# 378403

Enc. Submitted documents

c: Requestor
(w/o enclosures)