



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2010

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-08359

Dear Mr. Griffith:

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# 384710 (ORR# 10-2485).

The McKinney Police Department (the "department"), which you represent, received a request for information related to a named individual, including any incidents at a specified address. You claim that the requested information 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.

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 section encompasses the doctrine of common-law privacy, which protects information that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *See id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987)*

(prescription drugs, illnesses, operations, and physical handicaps). This office has also found that the 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) (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). 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 a copy of all police reports for 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 of the Government Code in conjunction with common-law privacy.

However, you have submitted records that do not list the named individual as a suspect, arrestee, or defendant. This information does not implicate the named individual's privacy concerns and may not be withheld under section 552.101 on this basis. Accordingly, we will address your arguments for this information.

You claim the information at issue is subject to section 552.108(a)(2) of the Government Code. 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the cases at issue have been closed without any charges being filed, and that no further action will be taken with respect to the incidents described therein. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to this information.

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* 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, the department may withhold case numbers 09-012035 and 07-055272 under section 552.108(a)(2).

We note that some of the basic information in case number 09-012035 is excepted from public disclosure under section 552.101. Section 552.101 also encompasses sections 772.118, 772.218 and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You indicate that the information at issue contains the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier. You do not inform us, however, whether the City of McKinney (the "city") is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the city is part of an emergency communication district established under one of these sections, then, to the extent the telephone number of the 9-1-1 caller, which we have marked, was supplied by a 9-1-1 service supplier, the department must withhold this information under section 552.101. If the city is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone number was not supplied by a 9-1-1 service supplier, then the department may not withhold the information we have marked under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318.

We have marked the basic information in case number 09-012035 that is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold this marked information under section 552.101 in conjunction with common-law privacy. The remaining basic information must be released to the requestor.

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 such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold case numbers 09-012035 and 07-055272 under section 552.108(a)(2) of the Government Code. If the city is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318, then, to the extent the telephone number we have marked was supplied by a 9-1-1 service supplier, the department must withhold the telephone number under section 552.101 of the Government Code. The department must withhold the basic information we have marked in case number 09-012035 under section 552.101 in conjunction with common-law privacy. The remaining basic information 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 384710

Enc. Submitted documents

c: Requestor  
(w/o enclosures)