



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2010

Mr. Jeffery L. Moore  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-08385

Dear Mr. Moore:

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# 381817.

The Roanoke Police Department (the "department"), which you represent, received a request for information pertaining to incidents involving a specified address or a named individual. You indicate the department will withhold Texas driver's license numbers and Texas license plate numbers 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). You claim portions of the requested 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.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the specified address or named individual. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note that you have not submitted for our review any information pertaining to the named individual. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. *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 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request requires the department to compile unspecified law enforcement records concerning the named individual. We note, however, that the submitted reports do not involve the named individual. Thus, we find that the present request does not implicate any individual's right to privacy for purposes of *Reporters Committee*. Accordingly, the department may not withhold any of the responsive information under section 552.101 of the Government Code on the basis of 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 1000004791 relates to a pending criminal investigation. Based upon this representation, we conclude that release of the information at issue 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). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to report number 1000004791.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 07-00618 and 1000006709 relate to concluded cases that did not result in

convictions or deferred adjudications. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to report numbers 07-00618 and 1000006709.

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 *Houston Chronicle*, 531 S.W.2d at 186-88; 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 report number 1000004791 pursuant to section 552.108(a)(1) of the Government Code and report numbers 07-00618 and 1000006709 pursuant to section 552.108(a)(2) of the Government Code.<sup>1</sup>

You assert that some of the basic information in report numbers 07-00618 and 1000006709 is excepted from disclosure pursuant to section 552.101 in conjunction with the informer's privilege. Section 552.101 also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state the information you have marked in report numbers 07-00618 and 1000006709 reveals the identity of complainants who reported possible criminal violations to the department, which is charged with enforcement of criminal law. You do not indicate, nor does it appear, the subject of the complaints knows the identity of the complainants. Based on your representations and our review, we conclude the department may withhold the complainants' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information you have marked in the basic information of report numbers 07-00618 and 1000006709 does not consist of the identifying information of the complainants and may not be withheld under section 552.101 on the basis of the informer's privilege.

In summary, with the exception of basic information, the department may withhold report number 1000004791 pursuant to section 552.108(a)(1) of the Government Code and report

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<sup>1</sup>As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

numbers 07-00618 and 1000006709 pursuant to section 552.108(a)(2) of the Government Code. In releasing basic information from report numbers 07-00618 and 1000006709, the department may withhold the identifying information of the complainants, which we have marked, under section 552.101 in conjunction with the informer's privilege. The remaining basic information must be released.<sup>2</sup>

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID#381817

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note basic information includes an arrestee's 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. See Gov't Code § 552.147(b).