



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutor's Office
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-08654

Dear Ms. Sandoval-Walker:

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# 382406.

The El Paso Police Department (the "department") received two requests for information pertaining to family violence between two named individuals. The first requestor seeks all incident reports involving family violence between two named individuals at three specified addresses, and the second requestor seeks information pertaining to a specified incident involving family violence between the two named individuals. You state you have released some responsive information to the second requestor. You claim the submitted 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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. 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. 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). We have also found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert that the first request requires the department to compile the criminal history of the two individuals named in the request. After reviewing the request and the submitted information, however, we believe the first requestor is seeking specific domestic violence reports involving both of the named individuals. Accordingly, we find that the named individuals' right to privacy has not been implicated by this request, and none of the submitted information may be withheld under 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 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.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert, and provide a letter from the District Attorney for the Thirty-Fourth Judicial District stating, that incident report number 10-068281 relates to a pending criminal investigation and prosecution. Based on this representation, we conclude that the release of the information pertaining to incident report number 10-068281 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is generally applicable to the submitted information pertaining to incident report number 10-068281.

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 incident report number 09-137235 relates to a criminal investigation that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to incident report number 09-137235.

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic

information). Thus, with the exception of basic information, the department may withhold the submitted information pertaining to incident report number 10-068281 under section 552.108(a)(1) of the Government Code and incident report number 09-137235 under section 552.108(a)(2) of the Government Code.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 382406

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)