



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 23, 2010

Sergeant Michael Munson  
Custodian of Records  
Webster Police Department  
217 Pennsylvania Avenue  
Webster, Texas 77598

OR2010-09221

Dear Sergeant Munson:

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# 384281.

The Webster Police Department (the "department") received a request for (1) all records, reports, pictures, audio and video recordings related to a specified case number; (2) the name of a specified individual; and (3) all reports, records, statistics, and audio and video recordings involving a named individual. 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. Section 552.101 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) (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. The present request, in part, seeks all information pertaining to 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 in conjunction with common-law privacy.<sup>1</sup>

We note, however, that you have submitted information related to the specified case number. In addition, you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and thus does not implicate the individual's right to privacy. Accordingly, we will address your remaining arguments for this information.

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 state, and provide an affidavit confirming, that the Harris County District Attorney's Office objects to the release of case number 10-00821 because it pertains to a pending criminal prosecution. Based on this representation and our review, we conclude that the release of this information 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.*, 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 applicable to case report 10-00821.

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 case reports 07-02941 and 07-02301 relate to criminal investigations that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to case reports 07-02941 and 07-02301.

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<sup>1</sup>As our ruling on this information is dispositive, we do not address your remaining arguments against its disclosure.

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). We note that basic information does not include driver's license numbers. See ORD 127 at 3-4. Thus, with the exception of basic information, the department may withhold case report 10-00821 under section 552.108(a)(1) of the Government Code and case reports 07-02941 and 07-02301 under section 552.108(a)(2) of the Government Code.

You raise section 552.101 in conjunction with common-law privacy for a portion of the basic information. Common-law privacy also protects 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. 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 determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of the incident, the entire report must be withheld to protect the individual's privacy. You argue that case report 07-02941 must be withheld in its entirety on the basis of common-law privacy. As noted above, case report 07-02941 is excepted from disclosure under section 552.108(a)(2), with the exception of basic information. Upon review, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the basic information at issue must be withheld on the basis of common-law privacy. Nevertheless, we find some of the basic information in case report 07-02941 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the basic information we have marked in case report 07-02941 under section 552.101 in conjunction with common-law privacy. However, we find that none of the remaining basic information in case report 07-02941 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining basic information in this report may be withheld under section 552.101 in conjunction with common-law privacy.

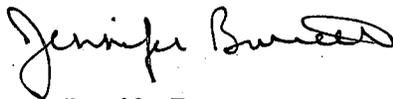
In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold case report 10-00821 under section 552.108(a)(1) of the Government Code and case reports 07-02941

and 07-02301 under section 552.108(a)(2) of the Government Code. The department must withhold the basic information in case report 07-02941 we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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 Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 384281

Enc. Submitted documents

c: Requestor  
(w/o enclosures)