



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

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

OR2010-09372

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# 383969.

The Town of Flower Mound (the "town"), which you represent, received a request for all information pertaining to complaints filed by or against two named individuals. You claim that 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 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 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 established. *See 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) (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). A compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the town to compile unspecified police records concerning two named individuals and, thus, implicates the individuals' right to privacy. Therefore, to the extent the town maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted incident report numbers 09012719, 09017645, and 09030045 and call for service numbers 08005674, 08023754, and 09032395, which do not depict the named individuals as suspects, arrestees, or criminal defendants. This information does not constitute a compilation of the named individuals' criminal history and it may not be withheld on this basis. Therefore we will address your remaining arguments against disclosure of this information. 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 that the information at issue relates to concluded criminal cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 of the Government Code 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 Publishing 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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the town may withhold incident report numbers 09012719, 09017645, and 09030045 and call for service numbers 08005674, 08023754, and 09032395 under section 552.108(a)(2) of the Government Code.¹

In summary, (1) to the extent the town maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) with the exception of basic information, which must be released, the town may withhold incident report numbers 09012719, 09017645,

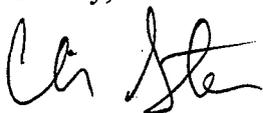
¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

and 09030045 and call for service numbers 08005674, 08023754, and 09032395 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 383969

Enc. Submitted documents

c: Requestor
(w/o enclosures)