



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 8, 2010

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604

OR2010-10114

Dear Ms. Messer:

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# 385874.

The Abilene Police Department (the "department") received a request for information pertaining to a named individual, including information related to an April 2010, burglary. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> 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. A compilation of an individual's criminal history is

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 of the department's records involving a named individual. This part of the request requires the department to compile the named individual's criminal history and thus implicates the named individual's right to privacy. However, we find the part of the request that seeks information pertaining to the specified burglary does not implicate the named individual's privacy interests. Accordingly, the report pertaining to case number 10-007232 may not be withheld as part of a criminal history compilation. To the extent the department maintains other 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. You also submitted the report pertaining to case number 08-021754, which does not list the named individual as a suspect, arrestee, or criminal defendant. We will address your arguments against disclosure of the submitted information pertaining to case numbers 10-007232 and 08-021754.

You claim the information pertaining to case numbers 10-007232 and 08-021754 is excepted under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred

adjudication. Gov't Code § 552.108(a)(2), .301(e)(1)(A). You state the investigation of case number 10-007232 is ongoing and that possible criminal charges are pending related to that case. Based upon this representation, we conclude the release of most of the submitted information pertaining to case number 10-007232 would interfere with the detection, investigation, or prosecution of crime. We therefore agree section 552.108(a)(1) is applicable to this information. *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). You also advise the investigation of case number 08-021754 has concluded and that it did not result in conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to the submitted information pertaining to case number 08-021754. Accordingly, the department may generally withhold the submitted information pertaining to case number 10-007232 under section 552.108(a)(1) and the submitted information pertaining to case number 08-021754 under section 552.108(a)(2) of the Government Code.

As you acknowledge, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the 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 the basic information you state has been released from the reports pertaining to case numbers 10-007232 and 08-021754, the department may withhold the submitted information pertaining to those reports under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code, respectively.

In summary, to the extent the department maintains records other than those pertaining to case number 10-007232 that list the named individual as suspect, arrestee, or criminal defendant, such information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information that you state has been released, the department may withhold the submitted information pertaining to case number 10-007232 under section 552.108(a)(1) of the Government Code and the submitted information pertaining to case number 08-021754 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](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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 385874

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)