



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2010

Ms. Jessica Sangsvang  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-10525

Dear Ms. Sangsvang:

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# 386817 (City of Fort Worth PIR Nos. W000625 & W000626).

The City of Fort Worth (the "city") received two requests from the same requestor for the audio recordings of all 9-1-1 calls as well as search warrant and arrest warrant affidavits pertaining to a specified incident. 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.

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not consist of the three categories of requested information. This decision does not address the public availability of such information, and the city need not release this information in response to this request.<sup>1</sup>

Section 552.101 of the Government Code excepts from public 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 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

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<sup>1</sup>As our ruling is dispositive, we need not address your arguments for this information.

legitimate concern to the public. *See 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. *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. 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). Furthermore, we find 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 city to compile unspecified law enforcement records concerning a named individual. We note, however, that the request is for certain information pertaining to a specified incident. Thus, we find the present request does not implicate any individual's common-law right to privacy, and none of the responsive information may be withheld under section 552.101 on this basis. Accordingly, we will address your remaining arguments for this information.

Next, we note portions of the responsive information are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The responsive information includes search warrants that have been filed with a court. These documents are subject to subsection 552.022(a)(17). Therefore, the city may only withhold this information if it is confidential under "other law." Although you raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108).* As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.108. However, we note some of the information subject to section 552.022 contains information subject to section 552.130

of the Government Code.<sup>2</sup> Because this exception is “other law” for purposes of section 552.022, we consider its applicability to the information at issue.

Section 552.130 of the Government code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130(a)(2). Thus, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>3</sup>

Next, we address your argument to withhold the remaining responsive information not subject to section 552.022. 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[.]” *Id.* § 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from the Tarrant County District Attorney’s Office confirming, the submitted information relates to a pending criminal prosecution. Based on this representation and our review, we determine the remaining responsive 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. 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). Therefore, we find section 552.108(a)(1) of the Government Code is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 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 city may withhold the remaining responsive information from disclosure under section 552.108(a)(1).

In summary, the city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information subject to section 552.022 of the

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code, which we have marked, must be released. With the exception of basic information, which must be released, the city may withhold the remaining responsive information under section 552.108(a)(1) 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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tp

Ref: ID# 386817

Enc. Submitted documents

c: Requestor  
(w/o enclosures)