



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Ms. Cara Leahy White
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
I-30 at Bryant-Irvin Road
Fort Worth, Texas 76107-4654

OR2010-13232

Dear Ms. White:

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# 392155.

The Azle Police Department (the "department"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports pertaining to a named individual, including information pertaining to a specified incident. You state you will release some information to the 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 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 (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is considered 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The instant request, in part, is for unspecified law enforcement records involving the named individual. Thus, we agree the portion of the request seeking unspecified law enforcement records requires the department to compile the named individual's criminal history and thereby implicates the named individual's privacy interests. However, you have only submitted information pertaining to the incident specified in the request. Because the requestor specifically requests this information, it is not part of a compilation of the individual's criminal history that implicates the person's privacy. Thus, the department may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your remaining argument against disclosure of the submitted information.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing criminal investigation and prosecution. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable in this instance. *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).

We note 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). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We additionally note basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1).

As you acknowledge, the requestor is an investigator with the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").¹ Therefore, the requestor

¹The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005.

may have a right of access to some of the submitted information. Section 22.082 of the Education Code provides that the SBEC “may obtain from any law enforcement or criminal justice agency all criminal history record information . . . that relate[s] to a specific applicant for or holder of a certificate issued under subchapter B, Chapter 21 [of the Education Code].” Educ. Code § 22.082. Section 411.090 of the Government Code grants a right of access for the SBEC to obtain criminal history record information (“CHRI”) from the Department of Public Safety (“DPS”) on persons who have applied to the SBEC. *See* Gov’t Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by DPS on certain school employees or applicants for employment. *See id.* § 411.0901. Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” *Id.* § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and section 411.087 of the Government Code give the TEA a statutory right of access to portions of the submitted information. *See id.*; *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Accordingly, we conclude, and you acknowledge, the department must release information from the submitted documents to this requestor that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).²

In summary, the department must release information from the submitted information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 22.082 of the Education Code. Except for basic information, which must be released, the department may withhold the remaining 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.

²We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 392155

Enc. Submitted documents

c: Requestor
(w/o enclosures)