



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2010

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-14539

Dear Mr. Scott:

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# 394860 (City ID# 237).

The City of Wichita Falls (the "city") received a request for all police records for a named individual during a specified period. 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 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 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. We note, however, records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information).

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the privacy right of this individual. Therefore, to the extent the city maintains law enforcement records that do not pertain to routine traffic offenses and depict the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. However, you have submitted reports that do not list this individual as a suspect, arrestee, or criminal defendant or that pertain to a routine traffic offense. These reports do not implicate the privacy interests of the named individual, and the city may not withhold them under section 552.101 of the Government Code based on common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as section 550.065 of the Transportation Code. Submitted report number 07-040657 is a CRB-3 peace officer's crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has not provided the city with two of the three pieces of information; thus, the city must withhold report number 07-040657 under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

You raise section 552.108 of the Government Code for submitted report numbers 05-080999, 05-063134, and 07-040658. 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, and provide a letter from the city's chief of police representing, that the cases pertaining to report numbers 05-080999, 05-063134, and 07-040658 are closed and did not result in conviction

or deferred adjudication. Thus, based on your representations and the provided letter, we conclude that section 552.108(a)(2) is generally applicable to these reports.

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); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic offense and arrest information, which must be released, the city may withhold report numbers 05-080999, 05-063134, and 07-040658 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the city maintains law enforcement records that do not pertain to routine traffic offenses and that depict the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold report number 07-040657 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information that must be released, the city may withhold report numbers 05-080999, 05-063134, and 07-040658 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 394860

Enc. Submitted documents

c: Requestor
(w/o enclosures)