



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2010

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2010-16628

Dear Ms. Champion:

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# 399144.

The City of Victoria (the "city") received a request for three specified police reports. You state the city will make available to the requestor some of the requested information, but claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold portions of the submitted information under section 552.108 of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the

¹We note the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. However, the requestor has a right of access to her own social security number and it must be released to her. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

information at issue relates to pending criminal cases. Based on this representation and our review, we conclude the release of the information you seek to withhold in report numbers 2010-00032459 and 2010-00004223 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the information at issue in report numbers 2010-00032459 and 2010-00004223.

Although you also assert that report number 2008-00012430 is a pending criminal case, the submitted documents show that the case has been dismissed. Because of these contradictory representations, we find you have failed to sufficiently demonstrate the applicability of section 552.108(a)(1) to report number 2008-00012430. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the city may not withhold report number 2008-00012430 under section 552.108 of the Government Code.

We also note that section 552.108 is limited by section 552.108(c), which provides basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, an identification and description of the complainant, a detailed description of the offense, and any property involved. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Although you state you have released page one of report number 10-32459, we note this page does not contain information sufficient to satisfy the requirement that basic information be released. *See* ORD 127. Accordingly, we determine the city must release a sufficient portion of report number 2010-00032459 to satisfy the required release of basic information pursuant to *Houston Chronicle*. The city may withhold the remaining information you seek to withhold in report numbers 2010-00032459 and 2010-00004223 under section 552.108(a)(1) of the Government Code.

You assert the prosecution charge report submitted in report number 2008-00012430 is confidential under section 552.101 of the Government Code because it is "attorney work product." 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. This office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, you have not raised another exception in this regard, established the prosecutor's interest in protecting the information as attorney work product, or explained why the information is protected as work product. *See* Gov't Code §§ 552.301(a), (e)(1)(A) (requiring governmental body to raise and explain applicability of exceptions), .108(a)(4), (b)(3). Therefore, we conclude the city may not withhold the prosecution charge report under section 552.101 of the Government Code as "attorney work product."

We note the remaining information contains criminal history record information ("CHRI") which is confidential by statute. Section 552.101 of the Government Code encompasses information protected by chapter 411 of the Government Code, which deems confidential CHRI. CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. See Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. See Gov't Code § 411.089(b)(1). Upon review, we find the information we have marked constitutes CHRI which must be withheld pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Some of the remaining information is excepted from disclosure on the basis of common-law privacy, which is also encompassed by section 552.101. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. See *id.* at 681-82.

This office has found 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find some of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, this information, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains Texas motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code.² Section 552.130

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas driver's license number we marked under section 552.130.

In summary, except for basic information that must be released in report number 2010-00032459, the city may withhold the information you seek to withhold in report numbers 2010-00032459 and 2010-00004223 under section 552.108(a)(1) of the Government Code. We have marked the information the city must withhold under (1) section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) section 552.101 of the Government Code in conjunction with common-law privacy; and (3) section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

³We note the information being released to the requestor includes the requestor's Texas driver's license number. This requestor has a special right of access to her own Texas driver's license number, which would otherwise be confidential with regard to the general public. See Gov't Code § 552.023(a). Open Records Decision No. 684 (2009) authorizes a governmental body to redact a Texas driver's license number under section 552.130 of the Government Code without the necessity of requesting a decision from this office under the Act. Accordingly, if the city receives another request for this information from an individual other than the one with a right of access under section 552.023, the city is authorized to withhold the Texas driver's license number at issue under section 552.130 without the necessity of requesting an attorney general decision.

Ref: ID# 399144

Enc. Submitted documents

c: Requestor
(w/o enclosures)