



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2011

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2011-05140

Dear Mr. Hager:

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# 414415 (Rowlett File Nos. 47609 and 47702).

The Rowlett Police Department (the "department"), which you represent, received a request for a specified incident report and a named individual's arrest records, jail records, or incident reports for a specified time frame involving certain charges or certain named individuals.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform this office the department has no documents responsive to a portion of the request. However, you have submitted documents you contend are responsive to this portion of the request. As you have made a good faith effort to relate the request to information held by the department and have identified the submitted records as being potentially responsive to the request, we will address your arguments for the submitted records. See Open Records Decision No. 561 at 8 (1990) (governmental body must make a good faith effort to relate a request to information held by the governmental body).

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. Section 552.101 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

¹We note the department received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

legitimate concern to the public. *Inclus. 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 established. *Id.* at 681-82. This office has found that 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual, thus implicating the named individual's right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted incident report number 02025587, which corresponds to the incident specified in the request. As this information was specifically requested, it may not be withheld as a compilation of the named individual's criminal history on the basis of common-law privacy. Accordingly, we will address your remaining arguments for this information.

Section 552.108(a)(2) 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 . . . 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)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state incident report number 02025587 pertains to an investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is generally applicable to the information at issue.

However, we note that 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 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). The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not

literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision 127 at 3-4. Therefore, with the exception of basic information, the department may withhold the remaining information relating to incident report number 02025587 under section 552.108(a)(2) of the Government Code.²

In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold incident report number 02025587 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 414415

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure. We note basic information includes an arrestee's social security number. 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(b).