



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 20, 2011

Assistant Chief Brett Colston
Waxahachie Police Department
216 North College
Waxahachie, Texas 75165

OR2011-05502

Dear Assistant Chief Colston:

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# 415136.

The Waxahachie Police Department (the "department") received a request for information relating to three named individuals and two specified addresses, including information concerning a specific incident. You state some of the requested information either has been or will be released. You claim other responsive information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 exception 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. *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 elements of the test must be established. *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). We also find a

compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to unspecified law enforcement records involving herself and two other named individuals. Thus, this request requires the department to compile criminal histories and thereby implicates the privacy interests of the requestor and the other two individuals. We note the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect her privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).¹ Therefore, information relating to the requestor may not be withheld under section 552.101 in conjunction with common-law privacy as a compilation of her criminal history. We also note the requestor seeks access to information concerning a specific incident. Her specific request for information concerning that incident does not require the department to compile unspecified law enforcement records, and thus the submitted information relating to that incident may not be withheld on privacy grounds as a compilation of criminal history information. But to the extent the department maintains any other information that depicts either of the other two named individuals as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 . . . 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). 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 indicate the submitted information concerning incident number 1000004318 is related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. Based on your representations and our review of the information at issue, we conclude section 552.108(a)(2) is generally applicable to the information concerning incident number 1000004318.

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). Section 552.108(c) refers to the basic front-page information held to be public in *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). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by

¹Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

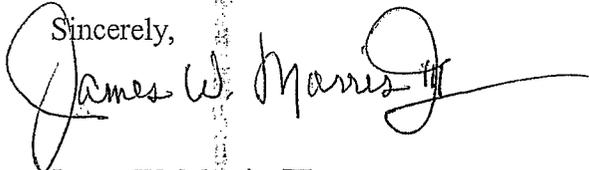
Houston Chronicle). The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining information concerning incident number 1000004318 under section 552.108(a)(2) of the Government Code.

In summary, the department (1) must withhold any unspecified law enforcement information that depicts any of the named individuals other than the requestor as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) may withhold the information concerning incident number 1000004318 under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need not address the other exceptions you raise.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 415136

Enc: Submitted documents

c: Requestor
(w/o enclosures)