



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2011

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2011-07655

Dear Ms. Alvarez:

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# 418996 (City ID# 2011-078).

The Kingsville Police Department (the "department") received a request for all records on a named individual, including arrests made on domestic violence and drug charges, and all calls the requestor made against the named individual, including those for domestic violence, breaking and entering, and being on the requestor's property without permission. You state you have released some information to the requestor. You claim that the remaining 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 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 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 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. 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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The present request, in part, seeks all records pertaining to the named individual. Thus, this portion of the request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Accordingly, with the exception of the specified reports, to the extent the department maintains 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. However, we find the part of the request that seeks information pertaining to calls made by the requestor against the named individual does not require the department to compile unspecified law enforcement records and, thus, does not implicate the named individual's privacy interests. You submitted three reports relating to calls made by the requestor against the named individual, case numbers 04-002383, 04-000210 and 03-005413, that were specifically requested and, therefore, may not be withheld as part of a criminal history compilation. You have also submitted a report, case number 03-006375, that does not list the named individual as a suspect, arrestee, or criminal defendant; this report is not part of a compilation of the named individual's criminal history. Thus, we will address your remaining argument against the disclosure of case numbers 04-002383, 04-000210, 03-005413, and 03-006375.

You also seek to withhold case numbers 04-002383, 04-000210, 03-005413, and 03-006375 under section 552.108(a)(2) of the Government Code, which 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). You state that this information relates to investigations that did not result in convictions or deferred adjudications. Based on your representation and our review of the information at issue, we conclude section 552.108(a)(2) of the Government Code is applicable to the information at issue.

However, section 552.108 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 Company 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 Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold case numbers 04-002383, 04-000210, 03-005413, and 03-006375 under section 552.108(a)(2) of the Government Code.

In summary, with the exception of the specified reports, to the extent the department maintains 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 case numbers 04-002383, 04-000210, 03-005413, and 03-006375 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 418996

Enc. Submitted documents

c: Requestor
(w/o enclosures)