



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-11535A

Dear Ms. Evans:

This office issued Open Records Letter No. 2011-11535 (2011) on August 10, 2011. In that decision, we concluded, except for basic information, the Houston Police Department (the “department”) may withhold submitted report number 078087907C under section 552.108(a)(1) of the Government Code. We have since received the department’s timely supplemental submission of an additional police report, number 146230103M. Consequently, this decision addresses whether the department may withhold the additional report and serves as the correct ruling and is a substitute for the decision issued on August 10, 2011. *See generally* Gov’t Code 552.011 (providing this office may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the “Act”)).

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 432175 (GC No. 18770).

The department received a request for incident number 65492695 and except for report number 92054111, all reports concerning two named persons who were complainants, reportees, or witnesses. The department released some information and argues report numbers 078087907C and 146230103M are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the department’s claimed exceptions to disclosure and have 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.” Section 552.101 encompasses the doctrine of common-law privacy, which protects

information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Here, although the requestor asks for reports concerning two named persons who were complainants, reportees, or witnesses, the department incorrectly rephrases the request by stating the request is for "information where [the two named persons] are possible suspects, arrestees, or defendants." Thus, the requestor did not ask for a compilation of the individuals' criminal history. Furthermore, because the submitted reports do not involve the named individuals as offenders, the reports do not constitute their criminal histories so as to implicate their privacy interests. Accordingly, the department may not withhold the reports under section 552.101 in conjunction with common-law privacy.

Next, the department asserts section 552.108(a)(1) of the Government Code exempts report number 078087907C from public disclosure. Section 552.108(a) exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states Exhibit 2 relates to a pending criminal investigation. Based upon this representation, we conclude release of the offense report 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. Civ. App.--Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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). Thus, with the exception of the basic front page offense and arrest information, the department may withhold report number 078087907C from disclosure based on section 552.108(a)(1).

Lastly, report number 146230103M contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]" Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Therefore, the department must withhold the Texas driver's license number we marked under section 552.130.¹

In summary, except for the basic information, the department may withhold report number 078087907C from disclosure pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license number we marked in report number 146230103M under section 552.130 of the Government Code and release the rest of the report.²

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/em

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing the withholding of ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note that 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).

Ref: ID# 432175

Enc: Marked documents

c: Requestor
(w/o enclosures)