



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

Ms. Diana Davis
Records Clerk
Harker Heights Police Department
402 Indian Trail
Harker Heights, Texas 76548

OR2011-12342

Dear Ms. Davis:

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# 429418.

The Harker Heights Police Department (the "department") received a request for information involving either of two named individuals or a specified address. You claim some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note some of the submitted information does not involve either of the named individuals or the specified address and thus is not responsive to the present request for information. This decision does not address the public availability of that information, which we have marked, and the department need not release that information in response to the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't

¹This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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 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 the two named individuals. Thus, the present request requires the department to compile the named individuals' criminal histories and thereby implicates their privacy interests. Therefore, any information maintained by the department that depicts either of the named individuals as a suspect, arrested person, or criminal defendant is confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information we conclude is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the marked information is confidential under section 552.101 in conjunction with common-law privacy.

We note the requestor is an attorney who may represent one of the individuals who are the subjects of the present request. If so, the requestor would have a right of access under section 552.023 of the Government Code to any information relating to his client the department would be required to withhold from the public to protect the client's privacy. *See* Gov't Code § 552.023.² Thus, if either of the named individuals is the requestor's client, then the requestor has a right to any information relating to the client the department would

²Section 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).

otherwise be required to withhold on privacy grounds. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). But if neither individual is the requestor's client, then the department must withhold any information that depicts either individual as a suspect, arrested person, or criminal defendant, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we address your claim 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). You contend release of the submitted information related to case number 11-02021 would interfere with a pending criminal investigation. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to that information. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including a detailed description of the offense, even if the information does not actually appear on the front page of an offense or arrest report. The department may withhold the rest of the submitted information related to case number 11-02021 under section 552.108(a)(1) of the Government Code.

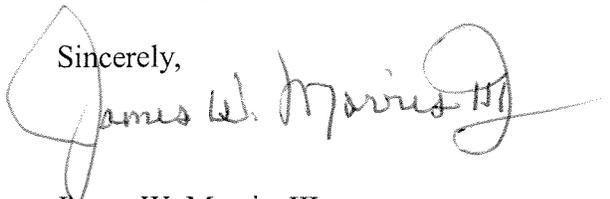
In summary, the department (1) must withhold any information it maintains that depicts either of the named individuals as a suspect, arrested person, or criminal defendant, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access under section 552.023 of the Government Code, and (2) may withhold the information related to case number 11-02021 under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c). The department must release the rest of the responsive information.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

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

JWM/em

Ref: ID# 429418

Enc: Submitted documents

c: Requestor
(w/o enclosures)