



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-12934

Dear Ms. Byles:

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# 431895 (Fort Worth PIR No. W010302).

The City of Fort Worth (the "city") received a request for information related to a specified offense report and any records related to a named individual over the past ten years. You state the city has provided or will provide to the requestor some of the requested information. You state that, prior to providing any information to the requestor, the city withheld or will withhold information under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers under section 552.147(b) of the Government Code.¹ You claim that the submitted 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.

¹ We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We further note section 552.147(b) 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).

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 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. *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 demonstrated. *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) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this case, the request for information, in part, seeks unspecified law enforcement records pertaining to the named individual. This part of the request requires the city to compile the named individual’s criminal history and thus implicates the named individual’s right to privacy. However, we find the parts of the request that seek information pertaining to the specified report do not implicate the named individual’s privacy interests. You submitted report number 11-21201, which is the specified report. As such, report number 11-21201 may not be withheld as part of a criminal history compilation. However, to the extent the city maintains law enforcement records other than report number 11-21201 that depict the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We will address your remaining argument against disclosure of report number 11-21201.

Next, we note the information submitted in report number 11-21201 includes a magistrate warning that has been signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under “other law.” *See* Gov’t Code § 552.022(a)(17); *see also Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you raise section 552.108 of the Government Code for this information, this section is a discretionary exception that protects a governmental body’s interests and is, therefore, not “other law” that makes court records confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the magistrate warning we marked may not be withheld under section 552.108 of the Government Code. As you raise no other exceptions to disclosure for this document, it must be released.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You represent report number 11-21201 relates to a pending criminal prosecution by the Misdemeanor Division of the Tarrant County District Attorney’s Office. Based on this representation and our review, we determine release at this time of the remaining portions of report number 11-21201 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). Thus, the remaining information at issue in report number 11-21201 is subject to section 552.108(a)(1) of the Government Code.

Section 552.108, however, 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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the remaining portions of report number 11-21201 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the city maintains law enforcement records other than report number 11-21201 that depict the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the marked magistrate warning pursuant to section 552.022(a)(17) of the Government Code. The city must also release basic information from report number 11-21201. The city may withhold the remaining portions of report number 11-21201 under section 552.108(a)(1) 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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/akg

Ref: ID# 431895

Enc. Submitted documents

c: Requestor
(w/o enclosures)