



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2011

Mr. Brent A. Money
Scott Money Ray Thomas PLLC
P.O. Box 1353
Greenville, Texas 75403-1353

OR2011-15177

Dear Mr. Money:

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# 433401.

The Greenville Police Department (the "department"), which you represent, received a request for information relating to five named individuals and two specified addresses. You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 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."¹ 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*

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).

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 five named individuals. Thus, this request for information requires the department to compile the named individuals' criminal histories and thereby implicates their privacy interests. Therefore, to the extent the department maintains any information that depicts any of the 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.

We note you have submitted information that does not depict any of the named individuals as a suspect, arrested person, or criminal defendant. Accordingly, we will determine whether the department may withhold that information under sections 552.103 and 552.108 of the Government Code. In this instance, the information at issue consists of completed investigations made by the department that fall within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). Although the department seeks to withhold the completed investigations under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022(a)(1). Therefore, the department may not withhold the completed investigations under section 552.103 of the Government Code. We note some of the information at issue is confidential under section 552.101 of the Government Code, which is other law that makes information confidential for purposes of section 552.022(a)(1). We also will consider the department's claims for the completed investigations under section 552.108 of the Government Code.

Common-law privacy under section 552.101 of the Government Code also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation v. Texas Industrial Accident Board*. *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* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information that is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold

that information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 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); Open Records Decision No. 434 at 2-3 (1986). Although you generally contend the completed investigations are related to pending cases, we find you have not sufficiently explained how or why release of any of the information at issue would interfere with the investigation or prosecution of a specific criminal case. We therefore conclude the department may not withhold any of the remaining information in the completed investigations under section 552.108(a)(1) of the Government Code.

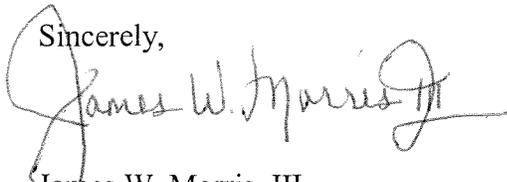
Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques but was not applicable to generally known policies and procedures. *See* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); *compare* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). Although you generally contend release of the completed investigations would “reveal[] law enforcement methods, techniques, and strategies,” we find you have not sufficiently explained how or why release of the information at issue would interfere with law enforcement or crime prevention. We therefore conclude the department may not withhold any of the remaining information in the completed investigations under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold (1) any information it maintains that depicts any of the named individuals as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the information we have marked under section 552.101 and common-law privacy. The rest of the submitted information must be released.

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 cursive script that reads "James W. Morris, III". The signature is written in dark ink and is positioned below the word "Sincerely,".

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

JWM/em

Ref: ID# 433401

Enc: Submitted documents

c: Requestor
(w/o enclosures)