



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Chief James S. Kelley
City of Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2011-16980

Dear Chief Kelley:

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# 436486.

The Sweetwater Police Department (the "department") received a request for reports of closed investigations, assaults, drug use and sales, and family violence pertaining to two specified addresses over a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by noting some of the submitted information, which we have marked, is not responsive to the instant request for information because it pertains to incidents that occurred before the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request.¹

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. This section 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

¹As we are able to make this determination, we do not address your argument against disclosure of the nonresponsive information.

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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request requires the department to compile unspecified law enforcement records concerning individuals. We note, however, the request is for information pertaining to specified types of incidents that occurred at specified addresses. Thus, we find this request does not require the department to compile an individual's criminal history and does not implicate the privacy interests of any individual. Accordingly, the department may not withhold the responsive information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). We note the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.²

You raise section 552.108(b)(2) of the Government Code as an exception to disclosure for the remaining information. Section 552.108(b)(2) 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 . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(b)(2). You generally assert the remaining responsive information is subject to section 552.108(b)(2). However you have provided no arguments explaining how the information at issue relates to a criminal investigation that concluded in a result other than conviction or deferred adjudication. We

²As our ruling on the CR-3 accident report form is dispositive, we need not address your remaining argument against its disclosure.

therefore conclude the department may not withhold any of the remaining responsive information under section 552.108(b)(2) of the Government Code.

We note portions of the remaining responsive information are subject to section 552.130 of the Government Code.³ Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* 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(a)(1)-(2)). Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 436486

Enc. Submitted documents

c: Requestor
(w/o enclosures)