



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2012

Ms. Pamela N. Burns
Assistant City Secretary
City of Texarkana
P.O. Box 1967
Texarkana, Texas 75504

OR2012-00235

Dear Ms. Burns:

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# 441450.

The Texarkana Police Department (the "department") received a request for information pertaining to a named individual, including an incident at a specified address. You state you have released some of the requested information. You claim that the remaining information is exempted from disclosure under sections 552.101, 552.108, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which you state constitutes a representative sample.¹

Section 552.101 of the Government Code exempts 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 if it (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

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that records relating to routine traffic violations are not considered criminal history information. *See* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

You contend the request, in part, requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. You acknowledge the part of the request that seeks information pertaining to an incident at a specified address does not implicate the named individual's privacy interests; thus, case number T11-06863 may not be withheld as part of a criminal history compilation. However, to the extent the department maintains law enforcement records, other than the specified report, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. You have submitted a representative sample of case numbers T05-4426, T05-6154, T06-10398, T08-9267, T09-4138, and T10-01305, in which the named individual is not a suspect, arrestee, or criminal defendant, or the report involves a traffic violation. As such, these reports do not implicate the named individual's privacy interests and may not be withheld as part of a criminal history compilation. We will address your remaining arguments against the disclosure of these reports and case number T11-06863, which was specifically requested.

We note case number T08-9267 involves a sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 393, 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the requestor knows the identity of the alleged sexual assault victim listed in the report at issue. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly,

to protect the victim's privacy, the department must withhold case number T08-9267 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a) 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: (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case number T11-06863 relates to an open criminal case. Based upon your representation and our review, we conclude that release of case number T11-06863 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, section 552.108(a)(1) is applicable to the information at issue.

As you acknowledge, 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*. 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note that basic information includes, among other items, an identification and description of the complainant, but does not include identifying information of a witness or of a victim, unless the victim is also the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic front page offense and arrest information, which you state you have released, the department may withhold case number T11-06863 under section 552.108(a)(1) of the Government Code.²

We note portions of the remaining information are subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas, another state, or country is excepted from public release. Gov’t Code § 552.130(a). We find the department must withhold the information we have marked in case numbers T06-0650, T09-4138, and T10-01305 under section 552.130 of the Government Code.

²As our ruling is dispositive of this information, we need not address your remaining argument under section 552.1325 of the Government Code.

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).

In summary, to the extent the department maintains law enforcement records other than the specified report depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information, as well as case number T08-9267 in its entirety, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the department may withhold case number T11-06863 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in case numbers T06-0650, T09-4138, and T10-01305 under section 552.130 of the Government Code. The department must release the remaining information.⁴

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bs

Ref: ID# 441450

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that the remaining information contains a social security number. 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).