



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2012

Mr. B. Chase Griffith  
Brown & Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-00645

Dear Mr. B. Chase Griffith:

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# 442633 (McKinney ORR Nos. 10-4516, 10-4619, 10-4629).

The McKinney Police Department (the "department"), which you represent, received three requests from two requestors for information related to a named individual. Requests 10-4516 and 10-4619 seek all information related to the named individual. Request 10-4629 is a second request from the requestor in request 10-4516 and seeks all information related to the named individual and specified case numbers 0330174001, P012325301, 0127495202, P990341601, and 982276002. You claim 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.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You did not, however, submit to this office some of the specific information requested in request 10-4629. That request seeks all information related to the named individual and the following offenses: case number 0330174001, case number P012325301, case number 0127495202, case number P990341601, and case number 982276002. The information submitted to our

office for review with request 10-4629 contains an arrest report related to case number P990341601 and case number 982276002. The remaining specified reports are not included in the submitted information nor do you state the department does not have information related to case number 0330174001, case number P012325301, and case number 0127495202.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because you have not submitted case number 0330174001, case number P012325301, and case number 0127495202 to this office for our review, we have no basis for finding this information confidential under the Act. Thus, we have no choice but to order the department to release case number 0330174001, case number P012325301, and case number 0127495202 to the first requestor in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 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 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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Requests 10-4516 and 10-4619 require the department to compile unspecified law enforcement records concerning the named individual, thus implicating that individual's right to privacy. Therefore, to the extent the department maintains law enforcement records 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.<sup>1</sup> We note, however, that you have submitted reports which do not list the named individual as a suspect, arrestee, or criminal defendant as well as an arrest report pertaining to the two specified case numbers P990341601 and 982276002 listed in request 10-4629. This information does not implicate the privacy interests of the named individual. Accordingly, we address your arguments for this information.

You assert the remaining reports are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the remaining reports pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the remaining reports and they may be withheld on that basis.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975). Therefore, in withholding the remaining reports, the department must release basic information in accordance with section 552.108(c). We note basic information includes the charge or offense committed and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976). In this instance, some of the basic information in case number 98-17836 is protected by common-law privacy under section 552.101 of the Government Code. We have marked information in report 98-17836 that is highly intimate or embarrassing and not a matter of legitimate public interest. In releasing basic information under section 552.108(c), the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

In summary, the department must release case number 0330174001, case number P012325301, and case number 0127495202 to the first requestor under section 552.302 of the Government Code. The department must withhold from the second requestor all reports that list the named individual as a suspect, arrestee, or criminal defendant under

---

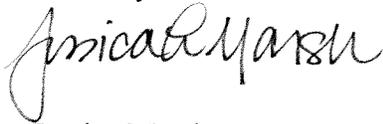
<sup>1</sup>As our ruling with regard to this information is dispositive we need not address your remaining arguments against its disclosure under section 552.101 of the Government in conjunction with section 58.007 of the Family Code or section 552.108 of the Government Code.

section 552.101 in conjunction with common-law privacy. The department must withhold from the first requestor all reports, except an arrest report related to case number P990341601 and case number 982276002, that list the named individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. The department may withhold the remaining reports under section 552.108 of the Government Code but must release basic information under section 552.108(c). In releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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](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,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 442633

Enc. Submitted documents

c: Requestor  
(w/o enclosures)