



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Ms. Andrea M. Gardner
City Manager
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR2012-04298

Dear Ms. Gardner:

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# 452885.

The City of Copperas Cove (the "city") received a request for information involving two named individuals, a specified address, and a specific time period. You claim the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 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 that 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.

The present request is for unspecified law enforcement records involving the named individuals. This request requires the city to compile the individuals' criminal histories and thereby implicates their privacy interests. Therefore, to the extent it maintains any information that depicts either of the named individuals as a suspect, arrested person, 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 note you have submitted information that does not depict either of the named individuals as a suspect, arrested person, or criminal defendant. That information is not a compilation of the individual's criminal history and may not be withheld on that basis under section 552.101 and 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). You state the information related to case number 12-0135 pertains to a pending investigation. Based on your representation, we conclude section 552.108(a)(1) is applicable to that information. *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).

We note 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). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the information related to case number 12-0135; including the CAD incident report, under section 552.108(a)(1) of the Government Code.

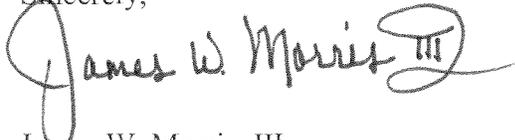
In summary, the city (1) must withhold any information it maintains that depicts either of the named individuals as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) may withhold the information related to case number 12-0135 under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c), which must be released. As

we are able to make these determinations, we need not address the other exceptions you claim.

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 "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

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

JWM/em

Ref: ID# 452885

Enc: Submitted documents

c: Requestor
(w/o enclosures)