



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

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

OR2012-04533

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# 449133.

The City of Sweetwater (the "city") received a request for information related to a specified accident. You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the 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. *See* Gov't Code § 552.301(e). We understand the city received the request on January 12, 2012. Accordingly, the city's fifteen-business-day deadline was February 3, 2012. You did not submit a copy of the written request for information until March 20, 2012. Consequently, we find the city failed to comply with the requirements of section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the information is confidential by law or third party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the city may not withhold any of the requested information under section 552.108. You also raise sections 552.101, 552.132, and 552.1325 of the Government Code. In addition, we note some of the submitted information is subject to section 552.130 of the Government Code.¹ Because sections 552.101, 552.130, 552.132, and 552.1325 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions.

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 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 record information 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You argue the “present request is for unspecified law enforcement records involving the named individual(s).” Upon review, we find this request does not seek a compilation of an individual's criminal history; rather, the request is for information related to a specified accident. Such a request does not implicate an individual's common-law right of privacy. Accordingly, the city may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Next, you assert some of the remaining information is excepted from disclosure under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Id. § 552.132(b). The remaining information is not held by the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. We therefore conclude the city may not withhold any portion of the remaining information under section 552.132 of the Government Code.

Section 552.1325 of the Government Code provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). Upon review, we find the remaining information does not include a victim impact statement for purposes of section 552.1325, nor have you explained that any of the information at issue was submitted to the city for the purposes of preparing a victim impact statement. Therefore, the city may not withhold any of the remaining information under section 552.1325 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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 Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 449133

Enc. Submitted documents

c: Requestor
(w/o enclosures)