



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2012

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

OR2012-05405

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# 450728.

The Sweetwater Police Department (the “department”) received a request for all records of its incoming and outgoing communications during a specified time period, including radio dispatches, logs or radio calls, and dispatch logs. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301(a). Section 552.301(b) requires the governmental body to ask this office for a decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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).

You state the department received the present request for information on January 19, 2012; therefore, the department's ten-business-day deadline under section 552.301(b) was February 2. The department requested this decision by United States mail meter-marked February 7. *See* Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). We note the provision of a cost estimate to the requestor did not toll the department's deadline under section 552.301(b). *See id.* § 552.2615(g) ("The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G [of the Act]."). Thus, the department did not comply with section 552.301 of the Government Code in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when 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 claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 (1991). In failing to comply with section 552.301, the department waived section 552.108 and may not withhold any of the submitted information on the basis of that exception. We note the department also claims sections 552.101, 552.132, and 552.1325 of the Government Code. We also note section 552.130 of the Government Code is or may be applicable to some of the submitted information.¹ Because the applicability of sections 552.101, 552.130, 552.132, or 552.1325 can provide compelling reasons for non-disclosure, we will determine whether the department must withhold any of the submitted information under those 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 exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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. Common-law privacy protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information related to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing

¹This office will raise section 552.130 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).

information attorney general has held to be private). We also have concluded a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States 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).

Although you contend the present request is for unspecified law enforcement records, so as to implicate privacy interests, we note the requestor neither seeks access to information involving any specific individual nor identifies any individual to whom the requested information might pertain. Thus, the present request does not require the department to compile any individual's criminal history, and the submitted information may not be withheld on that basis under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, we conclude some of the submitted information is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov't Code § 552.130(a)(1)-(2)*. The department must withhold the information we have marked under section 552.130 of the Government Code to the extent the information is related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration.

Section 552.132 of the Government Code provides in part:

(a) Except as provided by Subsection (d), in this section, "crime victim or claimant" means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(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.

(c) If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of

compensation awarded to that crime victim or claimant are public information and are not excepted from [required public disclosure].

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.[]

(e) If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Id. § 552.132. Because the submitted information is maintained by the department, and not the crime victim's compensation division of this office, section 552.132(b) is not applicable in this instance. Moreover, you do not indicate the submitted information involves a crime victim who is an employee of a governmental body, so as to be subject to section 552.132(d). We therefore conclude the department may not withhold any of the remaining information under section 552.132 of the Government Code.

Section 552.1325 of the Government Code provides as follows:

(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. Although you raise section 552.1325, you have not demonstrated that the remaining information includes a victim impact statement or that any of the remaining

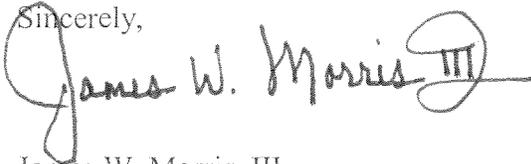
information was submitted to the department for the purpose of preparing a victim impact statement. We therefore conclude the department may not withhold any of the remaining information under section 552.1325 of the Government Code.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the information we have marked under section 552.130 of the Government Code to the extent the information is related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration. The rest of the submitted 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and a prominent "III" at the end.

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

JWM/em

Ref: ID# 450728

Enc: Submitted documents

c: Requestor
(w/o enclosures)