



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2012

Mr. Peter Scott  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2012-05489

Dear Mr. Scott:

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# 450841 (City ID# 61).

The Wichita Falls Police Department (the "department") received a request for all reports or complaints related to three named individuals during a specified date range. You claim the requested 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.

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 satisfied. *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 an individual's privacy interest, the Court recognized a distinction between public records found in courthouse and police station

files and a compiled summary of information, while noting an individual's significant privacy interest in a compilation of his or her criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the individuals named in the request, implicating the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records that depict any of the named individuals 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. We note information listing an individual as a victim, witness, or involved party generally does not implicate that individual's privacy interest. Thus, as case numbers 06-041284, 06-040185, 04-060469, and 02-042860 do not depict any of the named individuals as a suspect, arrestee, or criminal defendant, that information may not be withheld under section 552.101. Because you raise no additional arguments against disclosure of case number 06-041284, that information must be released. However, we will address your arguments against disclosure of case numbers 06-040185, 04-060469, and 02-042860 under section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in a conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information related to case numbers 06-040185, 04-060469, and 02-042860 pertains to criminal investigations that have been closed and did not result in a conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to case numbers 06-040185, 04-060469, and 02-042860.

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 Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the department may withhold case numbers 06-040185, 04-060469, and 02-042860 under section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, to the extent the department maintains law enforcement records that depict any of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code. With the exception of basic information, the department may withhold case numbers 06-040185, 04-060469, and 02-042860 under section 552.108 of the Government Code. The remaining 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](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,



Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/sdk

Ref: ID# 450841

Enc. Submitted documents

c: Requestor  
(w/o enclosures)