



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2012

Ms. Doris Preusse
Senior Records Clerk
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2012-05653

Dear Ms. Preusse:

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# 451148.

The Pflugerville Police Department (the "department") received a request for information pertaining to incidents that occurred at a specified address involving a named individual during a specified time period. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. We have considered the exception 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."¹ 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

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

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 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). 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 individual at issue. We find this request for unspecified law enforcement records implicates the named 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. We note you have submitted incident reports and computer aided dispatch reports that do not depict the named individual as a suspect, arrestee, or a criminal defendant. These reports do not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report numbers 10010239, 10020312, and 11100096 relate to pending criminal investigations. Based upon this representation and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Accordingly, we conclude section 552.108(a)(1) of the Government Code is generally applicable to incident report numbers 10010239, 10020312, and 11100096.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; 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 you state the department is releasing, you may withhold incident report numbers 10010239, 10020312, and 11100096 under section 552.108(a)(1) of the Government Code.

We note portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code* § 552.130(a)(1)-(2). We have marked the information subject to section 552.130. We note, however, the requestor appears to be the spouse of one of the individual's whose Texas motor vehicle record information is at issue. Section 552.130 protects privacy interests, and as his wife's authorized representative, the requestor would have a right of access under section 552.023 to some of the information marked under section 552.130.² Thus, if the requestor is his spouse's authorized representative, then he has a right of access to that information and the department must release the marked Texas motor vehicle record information that pertains to his spouse. To the extent the requestor is not acting as his spouse's authorized representative, the department must withhold his spouse's Texas motor vehicle record information under section 552.130 of the Government Code. The department must withhold the remaining Texas motor vehicle record information we have marked in the documents and indicated on the video recordings under section 552.130 of the Government Code.

In summary, 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. With the exception of basic information, the department may withhold incident report numbers 10010239, 10020312, and 11100096 under section 552.108(a)(1) of the Government Code. To the extent the requestor is not acting as his spouse's authorized representative, the department must withhold his spouse's Texas motor vehicle record information under section 552.130 of the Government Code. The department must withhold the remaining Texas motor vehicle record information we have marked in the documents and indicated on the video recordings under section 552.130 of the Government Code. The remaining information must be released.

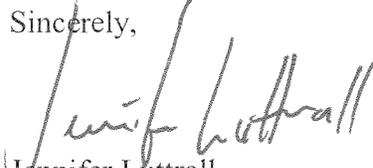
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General's Open Government Hotline, toll free,

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

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 cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the printed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 451148

Enc. Submitted documents

c: Requestor
(w/o enclosures)