



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2012

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

OR2012-08063

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# 454903.

The Sweetwater Police Department (the "department") received two requests for a specified offense report pertaining to the burglary of a vehicle. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.132 and 552.1325 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) (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 May 23, 2012). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present requests require the department to compile unspecified law enforcement records concerning an individual or individuals. However, the requests are for a specified offense report pertaining to the burglary of a vehicle. Thus, we find the requests do not require the department to compile an individual's criminal history and does not implicate the privacy interests of any individual. Accordingly, the department may not withhold the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a) 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: (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal investigation. Based upon your representation and our review, we conclude that release of the submitted information 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).

As you acknowledge, 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 (1976) (summarizing the types of information considered to be basic information). With the exception of basic front page information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. Basic information does not include motor vehicle record information subject to section 552.130 of the Government Code. Therefore, we need not consider your section 552.130 claim. However, we will consider your claims under sections 552.132 and 552.1325.

Section 552.132 of the Government Code provides, in relevant part, the following:

(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.

...

(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.

Gov't Code § 552.132(b), (d). The remaining information is held by the department and not the crime victim's compensation division of the attorney general's office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of the department who made an election in accordance with section 552.132(d). Accordingly, we conclude the department may not withhold any portion of the remaining information under section 552.132 of the Government Code.

You raise section 552.1325 of the Government Code, which 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. Article 56.32 of the Code of Criminal Procedure defines victim to include an individual who suffers physical or mental harm as a result of criminally injurious conduct.

Code Crim. Proc. art. 56.32(a)(10), (11). Upon review, we find the remaining information does not include a victim impact statement for the purposes of section 552.1325. In addition, we find the department failed to establish the remaining information was submitted for the purpose of preparing a victim impact statement. Thus, we conclude the department has not established section 552.1325 is applicable to the remaining information and the department may not withhold such information based on that exception.

In summary, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/bhf

Ref: ID# 454903

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)