



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-09313

Dear Ms. Evans:

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# 456405 (GC No. 19564).

The Houston Police Department (the "department") received a request for all incident reports pertaining to the requestor, three other named individuals, and four specified addresses. 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 representative sample of information.¹

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. Section 552.101 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request requires the department, in part, to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting any of the three 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. However, we note you have submitted information that does not depict the any of the named individuals as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individuals' criminal histories, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address the applicability of your remaining argument under section 552.108 of the Government Code for this information.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 061344309, 029296310, and 025115305 are related to investigations that are inactive pending additional leads. You assert, however, that the statute of limitations has not run, and the investigations may be reactivated once additional leads are developed. You state the release of report numbers 061344309, 029296310, and 025115305 would interfere with the detection and investigation of crime. We note, however, that report number 029296310 pertains to a misdemeanor theft that occurred in February of 2010. The statute of limitations for this offense is two years. *See* Crim. Proc. Code art. 12.02 (indictment for Class B misdemeanor theft may be presented within two years from date of commission of the offense, and not afterward). Report number 025115305 pertains to an incident of forgery that occurred in February of 2005. The statute of limitations for this offense is seven years. *See id.* art. 12.01(3)(G) (indictment for fraudulent use of personal identifying information under Penal Code section 32.51 may be presented within seven years from the date of the commission of the offense, and not afterward). You state the department received this request for information on March 27, 2012. More than two years have elapsed since February 2010, and more than seven years have elapsed since February 2005, in which the events giving rise to the investigations occurred, and you have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of report numbers 029296310 and 025115305

would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 029296310 and 025115305 may not be withheld under section 552.108(a)(1) of the Government Code. However, based on your representations, we conclude section 552.108(a)(1) is generally applicable to report number 061344309. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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). You state the information in report numbers 028907112 and 126944908 pertains to incidents that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to report numbers 028907112 and 126944908.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note, however, that basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Therefore, with the exception of basic information, the department may withhold report number 061344309 under section 552.108(a)(1) of the Government Code and report numbers 028907112 and 126944908 under section 552.108(a)(2) of the Government Code.

As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy, which protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating 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 found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find portions of report number 025115305 contain highly intimate or embarrassing information of no legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information in report numbers 029296310 and 025115305 is subject to sections 552.130 and 552.136 of the Government Code.² Section 552.130 provides that information related to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a)(1). The department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold the credit card number we have marked in report number 025115305 under section 552.136 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting 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. With the exception of basic information, the department may withhold report number 061344309 under section 552.108(a)(1) of the Government Code and report numbers 028907112 and 126944908 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked in report number 025115305 under section 552.101 of the Government Code in conjunction with common-law privacy, the information we have marked in report numbers 029296310 and 025115305 under section 552.130 of the Government Code, and the information we have marked in report number 025115305 under section 552.136 of the Government Code. The department must release the remaining information.³

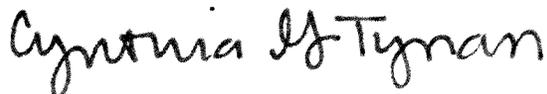
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the information being released contains the requestor's driver's license number, which is generally confidential under section 552.130 of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right to his own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the driver's license number. We also note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/bs

Ref: ID# 456405

Enc. Submitted documents

c: Requestor
(w/o enclosures)