



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 26, 2012

Ms. Leticia Mendiola  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, TX 78501

OR2012-09847

Dear Ms. Mendiola:

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# 457171.

The McAllen Police Department (the "department") received a request for all incidents pertaining to the requestor's client as well as another named individual, including one incident that occurred on a specified date. You claim that the submitted information is exempted 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.

Initially, we note the department did not submit any responsive information relating to the requestor's client. Thus, to the extent such information existed and was maintained by the department on the date the department received the request for information, we presume the department has released it.<sup>1</sup> If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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<sup>1</sup>We note section 552.023 of the Government Code provides that a person or person's authorized representative has a special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests. Gov't Code § 552.023(a).

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. *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 prongs of this test must be satisfied. *See 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 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, in part, seeks all records pertaining to the named individual. This portion of the request requires the department to compile the named individual’s criminal history. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy as a compilation of the named individual’s criminal history. However, we note, the requestor is also seeking, in part, information regarding an incident that occurred on a specified date. This portion of the request does not implicate the named individual’s common-law right to privacy. Thus, the information responsive to this portion of the request is not part of a criminal history compilation, and we will address your argument against the disclosure of this information.

Section 552.108(b) of the Government Code provides the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you generally assert the information at issue is excepted under section 552.108(b)(1), you have not explained how release of the information at issue would interfere with law enforcement or crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). Thus, you have not demonstrated section 552.108(b)(1) is applicable to the information at issue.

A governmental body claiming section 552.108(b)(2) must demonstrate that the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. As you have not demonstrated any of the information at issue is related to an investigation that concluded in a result other than conviction or deferred adjudication, you have not met your burden under section 552.108(b)(2).

Lastly, you do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See* Gov't Code § 552.108(b)(3). Consequently, you have failed to demonstrate the applicability of section 552.108(b)(3) to the information at issue. Thus, we conclude the department may not withhold any of the information at issue under section 552.108(b) 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. The department must release the submitted information relating to the specified incident.

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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 457171

Enc. Submitted documents

c: Requestor  
(w/o enclosures)