



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2012

Mr. B. Chase Griffith
Counsel for the Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-10652

Dear Mr. Griffith:

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# 458363.

The Little Elm Police Department (the "department"), which you represent, received a request for information pertaining to two named individuals at a specified address during a specified time period. 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. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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 requires the department to compile unspecified law enforcement records concerning the individuals at issue. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the department has submitted incident report number 11-000655 and event report number 11-0077605, which do not depict the named individuals as suspects, arrestees, or criminal defendants. 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. However, we note a portion of event report number 11-0077605, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in event report number 11-0077605 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You assert incident report number 11-000655 is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 number 11-000655 relates to a pending criminal investigation. 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 number 11-000655.

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*). The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, you may withhold incident report number 11-000655 from disclosure under section 552.108(a)(1).¹

Section 552.130 of the Government Code 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.² See Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information we have marked in event report number 11-0077605 under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked in event report number 11-0077605 pursuant to 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 number 11-000655 from disclosure under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in event report number 11-0077605 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.

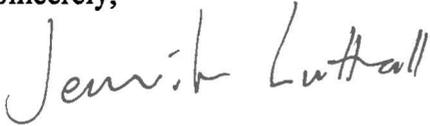
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹As our ruling is dispositive for incident report number 11-000655, we need not address your remaining arguments against its disclosure.

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

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".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 458363

Enc. Submitted documents

c: Requestor
(w/o enclosures)