



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2012

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

OR2012-11573

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# 459901 (GC No. 19675).

The Houston Police Department (the "department") received a request for all information pertaining to a named individual and a specified towing company. You claim the submitted 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. 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

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. We note records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082 (2)(B) (criminal history record information does not include driving record information). Furthermore, 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.

You state the present request requires the department to compile unspecified law enforcement records concerning the named individual and thus implicates this individual's right to privacy. We note, however, the information you have submitted pertains to routine traffic violations or does not list the individual as a suspect, arrestee, or criminal defendant. This information does not implicate the individual's right to privacy, and the department may not withhold it as a compilation of criminal history 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[.]" *Id.* § 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 Exhibits 4 and 5 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 Exhibits 4 and 5 would interfere with the detection and investigation of crime. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to Exhibits 4 and 5. *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 Exhibit 3 pertains to an incident 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 Exhibit 3.

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 Exhibits 4 and 5 under section 552.108(a)(1) of the Government Code and Exhibit 3 under section 552.108(a)(2) of the Government Code.

We note portions of Exhibit 2 and the basic information in Exhibit 3 are subject to common-law privacy. 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). Further, this office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). This office has also found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include choice of particular insurance carrier), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (individual’s mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked in Exhibits 2 and 3 is highly intimate or embarrassing and of no legitimate public concern. Accordingly, in releasing basic information from Exhibit 3, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must also withhold the information we have marked in Exhibit 2 under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to sections 552.130 and 552.137 of the Government Code.¹ Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130.* The department must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, with the exception of basic information, the department may withhold Exhibits 4 and 5 under section 552.108(a)(1) of the Government Code and Exhibit 3 under section 552.108(a)(2) of the Government Code. In releasing basic information from Exhibit 3, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked in Exhibit 2 under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. Unless the owner of the e-mail address at issue affirmatively consents to its release, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code. The department must release the remaining submitted information.²

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,

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).*

²We 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 Gov't Code § 552.147(b).*

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 black ink that reads "Cynthia G. Tynan". The signature is written in a cursive style with a large initial "C".

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/sdk

Ref: ID# 459901

Enc. Submitted documents

c: Requestor
(w/o enclosures)