



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2012-12337

Dear Ms. Benton:

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# 465913 (LGL-12-1062).

The Waco Police Department (the "department") received a request for arrest records related to a named individual, including a specified incident. You state some responsive information will be released. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 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 exception 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 elements of the test must be established. *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. United States 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). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than the specified incident, 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 as a compilation of the named individual's criminal history.

You have submitted information in Exhibit 4 which relates to the specified incident. That information is not part of a compilation of criminal history and does not implicate the named individual's privacy interests. Thus, that information may not be withheld under section 552.101 on privacy grounds as a compilation of criminal history information.

You claim section 552.108 of the Government Code for portions of Exhibit 4, which pertains to the specified incident. Section 552.108 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 the information you have marked in Exhibit 4 pertains to a pending criminal case. Based on your representation and our review, we determine the release of the information you have marked 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information you have marked in Exhibit 4 pursuant to section 552.108(a)(1) of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a).

Therefore, the department may withhold the social security number you have marked under section 552.147(a).¹

In summary, to the extent the department maintains law enforcement records, other than the specified incident, 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 as a compilation of the named individual's criminal history. The department may withhold (1) the information you have marked in Exhibit 4 pursuant to section 552.108(a)(1) of the Government Code, and (2) the social security number you have marked under section 552.147(a) 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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

Ref: ID# 465913

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note 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 under the Act. Gov't Code § 552.147(b).