



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2012

Mr. Ross Fischer  
City of Carrollton  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 West William Cannon, Suite 609  
Austin, Texas 78745

OR2012-13427

Dear Mr. Fischer:

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# 462991.

The City of Carrollton (the "city"), which you represent, received a request for (1) a list of all persons accused of an offense under a specified ordinance pertaining to single family dwelling rental properties, (2) the addresses of the properties that gave rise to these offenses, (3) the dates of the offenses, (4) the citation or cause numbers, and (5) the offense reports. You claim the requested information is not subject to the Act. Alternatively, you claim that 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 representative sample of information.<sup>1</sup>

Initially, you state the requested information is contained within the records of the judiciary. We note the requested information may not be subject to the Act if it is maintained by only the municipal court and, thus, consists of records of the judiciary. Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See Open*

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<sup>1</sup>We 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.

Records Decision No. 25 (1974). In this instance, the requestor seeks a list of all persons accused of an offense under a specified city ordinance and specified information pertaining to each offense. Accordingly, to the extent the submitted information is maintained solely by the municipal court, it is not subject to release under the Act and need not be released in response to the present request.<sup>2</sup> See Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); TEX. R. JUD. ADMIN. 12 (public access to judicial records). However, to the extent the submitted information or copies of the submitted information are also maintained by the city, the submitted information is subject to the Act, and we will consider the city's arguments against disclosure.

Section 552.101 of the Government Code exempts 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 common-law right to privacy, which protects information if it (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 met. *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. You argue the instant request requires the city to compile unspecified law enforcement records concerning individuals. However, we find the requestor is not seeking information pertaining to any specified individual. Thus, the instant request does not require the city to compile any named individual's criminal history and does not implicate any individual's right to privacy. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code as a compilation of any individual's criminal history.

Section 552.108 of the Government Code provides, in pertinent part, the following:

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<sup>2</sup>We note records of the judiciary may be public under other sources of law. See Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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[.]

...

(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 [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(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[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, although you raise subsections 552.108(a)(1) and 552.108(a)(2) for the information designated with the codes PT, PJ, AD, IA, OM, OW, UI, RA, AJ, PP, and TS, you provide arguments to support a claim under subsection 552.108(a)(1). As previously stated, subsection 552.108(a)(1) pertains to information, the release of which would interfere with a particular pending criminal investigation or prosecution. You state the information designated with the codes PT, PJ,

AD, IA, OM, OW, UI, RA, AJ, PP, and TS pertain to cases that are pending before a court of original jurisdiction and the release of this information would interfere with the prosecution of each offense. Thus, we conclude section 552.108(a)(1) is generally applicable the information designated with the codes PT, PJ, AD, IA, OM, OW, UI, RA, AJ, PP, and TS. *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).

We note, however, the information at issue includes a copy of a citation. Because a copy of the citation was provided to the individual who was cited, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). We therefore conclude the copy of the citation we have marked may not be withheld under section 552.108(a)(1).

You raise section 552.108(a)(2) for the information designated with the codes DJ, DS, and DP. 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 designated with the codes DJ, DS, and DP pertains to investigations that did not result in a conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to the information designated with the codes DJ, DS, and DP.

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*). Therefore, with the exception of basic information and the copy of the citation, the city may withhold the information designated with the codes PT, PJ, AD, IA, OM, OW, UI, RA, AJ, PP, and TS under section 552.108(a)(1) of the Government Code and the information designated with the codes DJ, DS, and DP under section 552.108(a)(2) of the Government Code.

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, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> Gov't Code § 552.130. Upon review, we find the city must withhold the driver's license number we have marked under section 552.130 of the Government Code.

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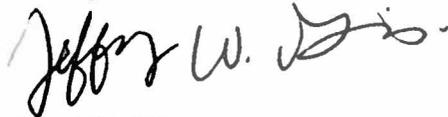
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, with the exception of basic information and the copy of the citation, the city may withhold the information designated with the codes PT, PJ, AD, IA, OM, OW, UI, RA, AJ, PP, and TS under section 552.108(a)(1) of the Government Code and the information designated with the codes DJ, DS, and DP under section 552.108(a)(2) of the Government Code. The city must withhold the driver's license number we have marked 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](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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 462991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)