



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2012

Mr. Steven Meyer  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2012-17474

Dear Mr. Meyer:

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# 469732 (Arlington PD Ref. No. 8707-081312).

The Arlington Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual and any other arrest records, protective orders, or any other information about the named individual for a specified period of time. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it was created after the date the department received the request. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or

---

<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 established. *Id.* at 681-82. This office has found 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 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, in part, to compile unspecified law enforcement records concerning the individual named in the request, thus, implicating the named individual's right to privacy. However, we find the part of the request seeking information pertaining to a specified incident involving the named individual does not implicate the named individual's privacy interests. Accordingly, to the extent the department maintains law enforcement records, other than those pertaining to the incident specified in the request, depicting this individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup> We consider your argument under section 552.108 for the information specified in the request.

We note the information at issue includes documents filed with a court. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Pursuant to section 552.022(a)(17), a document that has been filed with a court is expressly public and may not be withheld unless it is confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.108 of the Government Code for the submitted court documents, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions

---

<sup>2</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information confidential for purposes of section 552.022(a)(17), and the department may not withhold the information at issue under section 552.108. However, because sections 552.101 and 552.130 make information confidential under the Act, we will consider the applicability of these exceptions to the court filed documents, as well as your argument under section 552.108 for the information not subject to section 552.022.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the marked fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold the fingerprint information we have marked in the documents subject to section 552.022(a)(17) under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the department must withhold the information we have marked in the documents subject to section 552.022(a)(17) under section 552.130 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[.]” *Id.* § 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 remaining information at issue pertains to a pending criminal investigation. Based upon this representation, we agree section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue. *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).

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). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976)

(summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the court filed documents we have marked and basic front-page offense and arrest information, you may withhold the responsive information pertaining to the incident specified in the request under section 552.108(a)(1).

In summary, to the extent the department maintains law enforcement records, other than those pertaining to the incident specified in the request, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold 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 the court filed documents under section 552.101 in conjunction with section 560.003 of the Government Code and section 552.130 of the Government Code. With the exception of basic information and the marked court filed documents, the department may withhold the information pertaining to the incident specified in the request under section 552.108 of the Government Code. The remaining responsive 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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

Ref: ID# 469732

Enc. Submitted documents

c: Requestor  
(w/o enclosures)