



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2012

Ms. Rebecca Brewer  
Attorney for City of Wylie  
Abernathy Roeder Boyd & Joplin, PC  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2012-19908

Dear Ms. Brewer:

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# 474228.

The Wylie Police Department (the "department"), which you represent, received a request for all reports involving the requestor and any calls for service to a specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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 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 requestor is seeking documents related to criminal history. However, in this instance, the requestor seeks information pertaining to himself and for calls for service to a specified address. The request for calls for service to a specified address does not require the department to compile unspecified law enforcement reports on any particular individual and does not implicate any individual's right to privacy. Further, the requestor has a special right of access to his own information. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, none of the submitted information may be withheld as a compilation of criminal history under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to driving record information. *See id.* § 411.082(2)(B). Upon review, we find none of the submitted information constitutes CHRI for purposes of chapter 411 of the Government Code, and it may not be withheld under section 552.101 on that basis.

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 report number 06002081 pertains to a pending criminal investigation. However, this report concerns a burglary incident that occurred in 2006. The statute of limitations for burglary is five years. *See*

Crim. Proc. Code art. 12.01(4)(b). On the date the department received the request for information, more than five years had elapsed since the burglary incident, and you have not informed this office any criminal charges were filed within the limitations period. Further, you have not otherwise demonstrated how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, you have not demonstrated that section 552.108(a)(1) applies to report number 06002081, and it may not be withheld on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). We have marked information that is generally subject to section 552.130. However, we note section 552.130 protects personal privacy. The requestor is the spouse of the individual whose driver's license information is at issue. As noted above, a person or a person's authorized representative has a special right of access to information concerning the person that would otherwise be withheld to protect the person's privacy. *See id.* § 552.023(a); ORD 481. Thus, if the requestor is acting as his spouse's authorized representative, the department may not withhold the information we have marked under section 552.130. However, if the requestor is not acting as his spouse's authorized representative, the department must withhold the information we have marked under section 552.130. In either event, as no further exceptions to disclosure have been raised, the remaining information must be released to the requestor.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/som

Ref: ID# 474228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)