



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2013

Mr. James McKechnie  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307-1431

OR2013-00212

Dear Mr. McKechnie:

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# 479656 (City ID# 601).

The Wichita Falls Police Department (the "department") received a request for information involving a named individual. You claim the requested 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 information you submitted.

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 a private citizen's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and

compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

The present request is for "[a]ny and all information" involving the named individual. Thus, this request for unspecified law enforcement records requires the department to compile the named individual's criminal history and thereby implicates her privacy interests. Therefore, to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information related to case numbers 92-082875 and 92-042227 that does not depict the named individual as a suspect, arrested person, or criminal defendant. The information related to those cases does not implicate the individual's privacy interests and may not be withheld on that basis under section 552.101.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information related to case numbers 92-082875 and 92-042227 pertains to investigations that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to that information.

We note 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 Publishing 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). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. Except for basic information under section 552.108(c), the department may withhold the submitted information related to case numbers 92-082875 and 92-042227 under section 552.108(a)(2) of the Government Code.

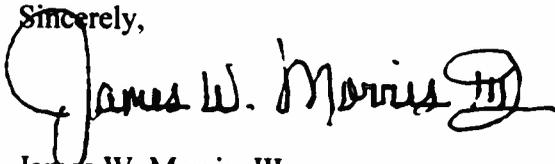
In summary, the department (1) must withhold any information it maintains that depicts the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) may withhold the information related to case numbers 92-082875 and 92-042227 under section 552.108(a)(2)

of the Government Code, except for basic information under section 552.108(c), which 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 479656

Enc: Submitted documents

c: Requestor  
(w/o enclosures)