



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2013

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

OR2013-08015

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# 487320 (Police Dept. Reference No. 010603-022513).

The Arlington Police Department (the "department") received a request for three specified police reports and any other police reports involving two named individuals as victims or a another named individual as a suspect. You indicate you have released some of the responsive information. 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 information.

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[.]" 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 report number 10-8689 relates to a pending criminal investigation. Based on your representations and our review, we find that release of report number 10-8689 would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to report number 10-8689. *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). Although you claim report number 09-79358 relates to a pending criminal investigation, we note the report pertains to a harassment offense that occurred in 2009. The longest possible statute of limitations for this offense is two years. See Penal Code § 42.07(c) (harassment is Class A or B misdemeanor); Crim. Proc. Code art. 12.02(a) (indictment or information on Class A or Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years have elapsed since the events giving rise to the investigation in report number 09-79358, and you have not informed this office any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of report number 09-79358 would interfere with the detection, investigation, or prosecution of crime. Therefore, the department has failed to demonstrate the applicability of section 552.108(a)(1) to report number 09-79358. Consequently, the department may not withhold any part of report number 09-79358 under section 552.108(a)(1) of the Government Code.

We note section 552.108 does not except 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 information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report number 10-8689 under section 552.108(a)(1).

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. Section 552.101 encompasses the doctrine of common-law 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 established. *Id.* at 681-82. The types of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouses 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review,

we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. The department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing and may not be withheld under section 552.101 of the Government Code 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, title, or registration issued by an agency of this state or another state or country.<sup>1</sup> Gov't Code § 552.130(a)(1)-(2). Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold report number 10-8689 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and 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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

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<sup>1</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).

Ref: ID# 487320

Enc. Submitted documents

c: Requestor  
(w/o enclosures)