



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2013

Mr. Robert G. Schleier, Jr.
Law Office of Robert G. Schleier, Jr., P.C.
116 North Kilgore Street
Kilgore, Texas 75662

OR2013-17250

Dear Mr. Schleier:

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# 503575.

The Kilgore Police Department (the "department"), which you represent, received a request for information pertaining to a named individual, including a specified incident, since December of 2012. The department claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the claimed exception 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."² Gov't Code § 552.101. Section 552.101 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

¹Although you also raise section 552.102(a)(2) of the Government Code for some of the submitted information, we understand from your arguments you intended to raise section 552.108(a)(2) of the Government Code for this information instead. We also note you have submitted three "single dispatch detail" reports for which you do not raise any exceptions to disclosure.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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. The requestor asks for all information held by the department concerning a named individual. Therefore, to the extent the department maintains any unspecified law enforcement information depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. However, the requestor also asks for information pertaining to a specific arrest. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. In addition, you have submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will address your arguments to withhold this information.

Section 552.108(a)(1) of the Government Code excepts from disclosure information 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). Generally, 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). We note incident report number 130100693 includes a citation. Because a copy of the citation has been 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). Therefore, the department may not withhold the citation, which we have marked, under section 552.108(a)(1). You state the remaining information in incident report numbers 130100693 and 130505948 relates to pending criminal investigations. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, we agree section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred

adjudication. Gov't Code § 552.108(a)(2). 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. You assert incident report numbers 130201912 and 130505236 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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). Basic information refers to the information held to be public in *Houston Chronicle* and it includes a detailed description of the offense. *Houston Chronicle*, 531 S.W.2d at 186-87. Thus, with the exception of the marked citation and the basic front-page offense and arrest information, the department may withhold incident report numbers 130100693 and 130505948 under section 552.108(a)(1) of the Government Code and incident report numbers 130201912 and 130505236 under section 552.108(a)(2) of the Government Code.³

We note some of the basic information in incident report number 130100693 is subject to common-law privacy. As noted above, common-law privacy protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the basic information in incident report number 130100693 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold this information, which we have marked, from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note some of the information in the marked citation is excepted from disclosure under section 552.130 of the Government Code.⁴ Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

³We note the basic information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, the department must withhold any unspecified law enforcement information depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common law privacy. With the exception of the marked citation and basic information, the department may withhold incident report numbers 130100693 and 130505948 under section 552.108(a)(1) of the Government Code and incident report numbers 130201912 and 130505236 under section 552.108(a)(2) of the Government Code; however, in releasing basic information from incident report number 130100693, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.⁵

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.

⁵We note the information to be released contains motor vehicle record information to which the requestor has a right of access pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e). Therefore, if the department receives another request for this information, section 552.130(c) authorizes the department to redact the submitted motor vehicle record information without requesting another ruling from this office.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 503575

Enc. Submitted documents

c: Requestor
(w/o enclosures)