



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2014

Ms. Judith N. Benton
Assistant City Attorney
Legal Services Department
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2014-20340

Dear Ms. Benton:

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# 542429 (Waco Reference No. LGL-14-228).

The Waco Police Department (the "department") received a request for the arrest forms related to a named individual and the requestor, including an incident on a specified date. You state the department released some information to the requestor. You state the department will redact some information under section 552.147 of the Government Code.¹ You claim portions of the submitted information are 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.

Initially, we note you have not submitted arrest records related to the requestor. To the extent information responsive to this portion of the request existed at the time the request was received, we presume you have released it. If not, you must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

¹Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. *See* Gov't Code § 552.147(b).

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. 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. We agree the present request requires the department to compile, in part, unspecified criminal history records concerning an individual named in the request, and thus, implicates that individual’s right to privacy. Therefore, to the extent the department maintains law enforcement records other than those pertaining to the incident specified in the request that depict the named individual as a suspect, arrestee, 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 pertaining to the incident specified in the request, which is not part of the criminal history compilation. Accordingly, we will address your remaining argument for this 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 the information in Exhibit 3 relates to an open criminal investigation and release of the information would interfere with that investigation. *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). Based on these representations and our review, we conclude the department may withhold the information you marked in Exhibit 3 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(2). Accordingly, the department must withhold the information you marked and the additional information we marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records other than those pertaining to the incident specified in the request that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you marked in Exhibit 3 under section 552.108(a)(1) of the Government Code. The department must withhold the information you marked and the additional information we marked under section 552.130 of the Government Code. The department must release the remaining information.

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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 542429

Enc. Submitted documents

c: Requestor
(w/o enclosures)