



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2006

Mr. Randy A. Stoneroad
Police Legal Advisor
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-01781

Dear Mr. Stoneroad:

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# 242856.

The City of Corpus Christi (the "city") received a request for (1) information pertaining to a specified address, and (2) information pertaining to a named individual, including an alleged assault occurring in 1998. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, you inform us that the city asked the requestor for clarification of the requested information pertaining to the 1998 assault. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform us that the requestor has not yet responded to this request for clarification; therefore, the city is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (ten-business-day deadline tolled while governmental body awaits clarification).

¹We note that the city failed to timely assert section 552.147 of the Government Code. *See* Gov't Code § 552.301(b)(1), (4). However, because this section is a mandatory exception, we will address your argument under it. *See id.* § 552.302.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section also 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). The type of information considered intimate and 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. In addition, where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

We have marked information that is confidential under common law privacy and *Industrial Foundation* and that must be withheld under section 552.101. The request also asks for all information held by the city concerning a named individual. We find that this request for unspecified law enforcement records requires the city to compile the criminal history of the individual and thus implicates the individual’s right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the city 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 in conjunction with common law privacy. We note, however, that the request for information pertaining to the specified address does not require the city to compile the named individual’s criminal history; therefore, this information is not part of a compilation of the individual’s criminal history as contemplated in *Reporters Committee* and may not be withheld under section 552.101 on that basis.

You assert that offense report 05-073059 is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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.” 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 Gov’t Code* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that offense report 05-073059 “is an open case which has not yet been prosecuted.” Based on this representation, we conclude that 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), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*. Thus, with the exception of the basic front-page offense and arrest information, you may withhold offense report 05-073059 under section 552.108(a)(1).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the city must withhold the Texas motor vehicle record information you have marked in the remaining information under section 552.130.

Finally, you assert that the social security numbers in the remaining information are excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. We agree that city must withhold the social security numbers you have marked in the remaining information under section 552.147.²

To conclude, the city is not required to release any responsive information for which it sought clarification. The city must withhold under section 552.101 the information we have marked under common law privacy and *Industrial Foundation*, as well as any unspecified law enforcement information depicting the individual at issue as a suspect, arrestee, or criminal defendant that is confidential under common law privacy and *Reporters Committee*. With the exception of the basic front-page offense and arrest information, the city may withhold offense report 05-073059 under section 552.108(a)(1), and it must withhold the remaining information marked under sections 552.130 and 552.147. The city must release the remaining information. As our ruling is dispositive, we do not address your other arguments for exception of the submitted information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

²We note that 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.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

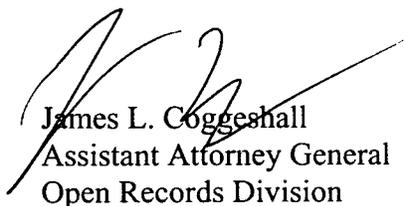
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/er

Ref: ID# 242856

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Enc. Submitted documents

c: Mr. Ken Sullivan
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(w/o enclosures)