



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2006

Ms. Patricia E. Carls
Brown & Carls, L.L.P.
City Attorney, City of Georgetown
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2006-04180

Dear Ms. Carls:

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# 246633.

The City of Georgetown (the "city"), which you represent, received a request for "any and all incident reports" and one arrest report for a named individual. You state that the city has released the arrest affidavit and felony complaint to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the portion of the present request seeking "any and all incident reports" pertaining to a named individual implicates the individual's right to privacy.¹ Section 552.101 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 (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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, the governmental body must meet both prongs of this test. *Id.* at 681-82.

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. See Gov't Code § 552.007, .352; Open Records Decision No. 325 at 2 (1982).

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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. However, we note that when a requestor asks for a specific arrest report, the request does not implicate an individual's common law right to privacy. Therefore, we will address your arguments pertaining to the specific arrest report.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that the information at issue pertains to investigations that did not result in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

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 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). Thus, with the exception of the basic front page offense and arrest information, the city may withhold the information at issue from disclosure based on section 552.108(a)(2). We note that the city has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, with the exception of the specific arrest report, to the extent the city maintains information which identifies the named individual as an arrestee, criminal suspect, or defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the city may withhold information pertaining to the specific arrest report and the reports that do not identify the named individual as an arrestee, criminal suspect, or defendant under section 552.108 of the Government Code.

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. *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).

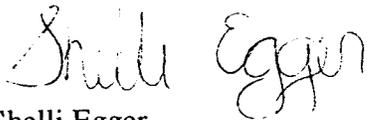
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



Shelli Egger
Assistant Attorney General
Open Records Division

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Ref: ID# 246633

Enc. Submitted documents

c: Mr. Samuel J. Mason, Sr.
1205 Church Street
Georgetown, Texas 78626
(w/o enclosures)