



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2006

Mr. Lawrence G. Provins  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR2006-05206

Dear Mr. Provins:

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# 249360.

The City of Pearland (the "city") received a request for a specified police report and any other criminal charges against a named individual from 1998 to 2006. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 (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*

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 449 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*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. 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 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.

The present request, in part, is for unspecified information relating to a named individual. That aspect of this request implicates the named individual's right to privacy. Therefore, to the extent that the city maintains any information other than the specified police report that relates to the named individual as a criminal suspect, arrested person, or defendant, any such information is protected by common-law privacy and must be withheld from the requestor under section 552.101 of the Government Code. We note, however, that when a requestor asks for a specific police report, the request does not implicate the individual's common-law privacy concerns. Therefore, we will address your arguments pertaining to offense report number 06-003923.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted report relates to charges pending in the Pearland Municipal Court. Based on your representation, we find that section 552.108(a)(1) is applicable to that report. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

Finally, we note that the submitted report contains the arrestee's social security number, which is subject to section 552.147 of the Government Code. Section 552.147 provides that, "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>2</sup> Therefore, the city must withhold the arrestee's social security number in the submitted report under section 552.147 of the Government Code.

In summary, any unspecified information maintained by the city that relates to the named individual as a criminal suspect, arrested person, or defendant is protected by common-law privacy and must be withheld from the requestor under section 552.101 of the Government Code. The city must withhold the arrestee's social security number in offense report number 06-003923 pursuant to section 552.147. With the exception of the basic information, the city may withhold offense report number 06-003923 under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure except to note that basic information is generally not excepted from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

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

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<sup>2</sup>We 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.

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

SE/sdk

Ref: ID# 249360

Enc. Submitted documents

c: Mrs. Rachel Osuna DiGenova  
715 Narcissus  
Clear Lake Shores, Texas 77565  
(w/o enclosures)