



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2006

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar, #300A
Dallas, Texas 75215-1801

OR2006-07080

Dear Ms. Middlebrooks:

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# 253433.

The Dallas Police Department (the "department") received a request for two specified incident reports. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) 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: (1) 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* Gov't Code

¹We 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. 499 (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.

§§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the two submitted incident reports relate to pending prosecutions for aggravated assault and aggravated assault with a motor vehicle. Based on your representations and our review, we determine that the release of the information you seek to withhold under section 552.108 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a "detailed description of the offense." *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You have marked the entire narrative portion of incident report number 0193898-R as information you seek to withhold under section 552.108. The remaining portions of this incident report do not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released. Accordingly, we determine that the department must release a sufficient portion of the narrative section of the incident report number 0193898-R to encompass a detailed description of the offense, to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information it has marked in both incident reports under section 552.108(a)(1). We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

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 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, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of a private citizen's criminal history is highly embarrassing information that is generally not of legitimate public interest. *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). We have reviewed the submitted information and agree that the information you have marked is criminal history record information belonging to a member of the public that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

Section 552.130 of the Government Code provides that a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *See* Gov't Code § 552.130(a)(1), (2). We agree that the department must withhold the Texas motor vehicle record information you have marked, as well as the information we have marked, under section 552.130.

Lastly, we note that section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the arrestee's social security number you have marked must be withheld pursuant to section 552.147.²

In summary, except for basic information including a detailed description of the offense, the department may withhold the information you have marked in incident report number 0193898-R under section 552.108(a)(1) of the Government Code. The department may also withhold the information you have marked in the remaining incident report under section 552.108(a)(1). The department must withhold the following: 1) the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy; 2) the Texas motor vehicle record information you have marked under section 552.130 of the Government Code; and 3) the social security number you have marked pursuant to section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.

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).

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.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 253433

Enc. Submitted documents

c: Ms. Sachindra Wickware
9732 Stonewood Drive
Dallas, Texas 75227
(w/o enclosures)