



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2006

Mr. Denis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-10991

Dear Mr. McElroy:

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# 260211.

The City of Fort Worth (the "city") received a request for (1) all records pertaining to the requestor and three other named individuals; (2) information pertaining to complaints filed by the requestor and one of the named individuals, including the names and identification numbers of the individuals assigned to the investigations; (3) the full names of two specified police detectives; (4) a police report pertaining to a specified incident; and (5) a written explanation from a named police detective "as to why he refuses to authorize the return of [the requestor's] gun." You state that the city is releasing some of the requested information, but you claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. You also inform us that the city is redacting social security numbers in accordance with section 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses the doctrine of common-law privacy, which protects information if it (1)

¹Section 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. Gov't Code § 552.147(b).

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 satisfied. *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.

In this instance, the requestor seeks, among other information, all records pertaining to him and three other individuals. We find that this portion of the request implicates these individuals' rights to privacy. As you correctly note, the requestor has a special right of access under section 552.023 of the Government Code to information that is excepted from public disclosure under laws intended to protect his privacy interest. *See* Gov't Code § 552.023. However, the requestor does not have a special right of access to information that implicates the other three individuals' privacy interests. We therefore conclude that, to the extent the city maintains law enforcement records depicting the three named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

We next address your claim under section 552.108 of the Government Code with respect to Incident Report Number 06-757. Section 552.108(a) 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." *Id.* § 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 id.* §§ 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 Incident Report Number 06-757 relates to an open and pending criminal investigation that is being conducted by the city's police department. Based upon this representation, we conclude that the release of Incident Report Number 06-757 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).

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*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by

Houston Chronicle). Thus, with the exception of the basic front page offense and arrest information, the city may withhold Incident Report Number 06-757 from disclosure based on section 552.108(a)(1). 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.

Lastly, we address section 552.130 of the Government Code with respect to Incident Report Number 06-35006. Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. *Id.* § 552.130. As you note, because section 552.130 excepts information from disclosure in order to protect individuals' privacy, the city may not withhold the information belonging to the requestor under this exception. *See id.* § 552.023. We agree that the city must withhold under section 552.130 the Texas driver's license numbers belonging to the two other individuals that you have marked in Incident Report Number 06-35006.

In summary, to the extent the city maintains law enforcement records depicting the three named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Other than basic information, the city may withhold Incident Report Number 06-757 under section 552.108(a)(1) of the Government Code. The city must withhold the Texas driver's license numbers that you have marked pursuant to section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.²

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 ten 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).

²Because some of this information would not be releasable with respect to the general public, if the city receives a future request for this information from a person other than the requestor or his authorized representative, the city should again seek our decision.

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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/eb

Ref: ID# 260211

Enc. Submitted documents

c: Mr. Gerald Don Pittman
3120 Purington Avenue
Fort Worth, Texas 76103
(w/o enclosures)