



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2007

Ms. Nicole Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2007-04366

Dear Ms. Webster:

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# 276135.

The City of Waco (the "city") received a request for all police and traffic court records involving a named individual. You state that you will release some information to the requestor. You also state that the city has redacted social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is 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 information.

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*

¹ Section 552.147(b) 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).

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. 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). Further, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the city to compile the arrest records of a named individual. This request for unspecified police reports implicates the named individual's right to privacy. To the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold these records under section 552.101 in conjunction with common-law privacy.²

You have submitted reports that do not list the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of the individual's criminal history, we will address your remaining arguments against disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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 indicate that case number 06-030184 relates to a criminal investigation that has concluded in a result other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to case number 06-030184.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have the discretion to release all or part of the remaining information in case number 06-030184 that is not otherwise confidential by law. Gov't Code § 552.007.

You state that some of the remaining information in Exhibit 4 is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information it has marked in Exhibit 4 under section 552.130 of the Government Code.

In summary, to the extent the city maintains information which depicts the named individual as a suspect, arrestee, or criminal defendant, it must be withheld under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the city may withhold case number 06-030184 pursuant to section 552.108(a)(2) of the Government Code. The marked Texas motor vehicle record information must be withheld pursuant to section 552.130. The remaining information must be released.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/sdk

Ref: ID# 276135

Enc. Submitted documents

c: Mr. Joe L. Sheppard
P.O. Box 175
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(w/o enclosures)