



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 11, 2007

Ms. Kristi J. Orr
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-16312

Dear Ms. Orr:

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# 296857.

The City of Houston (the "city") received a request for all records from 2000 to the present pertaining to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. 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." 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, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history ("CHRI") 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.

In this instance, the request is for any records from 2000 to the present regarding a named individual. This request for unspecified law enforcement records requires the city to compile the named individual's criminal history. 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. We have also marked compilations of CHRI in Exhibits 2, 5, 7, and 10.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code. § 58.007(c). The submitted incident report involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Accordingly, we find that Exhibit 3 is confidential in its entirety pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 4, 8, 9, and 10 relate to criminal investigations that are inactive pending additional leads. You also indicate that the statutes of limitations have not run and these investigations may be reactivated once additional leads are developed. However, as of the date the city received the request, the statute of limitations for Exhibits 9 and 10 expired. *See* Crim Proc. Code art. 12.01(4)(A) (limitations for theft, burglary, robbery is five years from date of offense). Thus, the city has not established the applicability of section 552.108(a)(1) to Exhibits 9 and 10.

However, based upon the city's representation and our review of Exhibits 4 and 8, we conclude that the release of this information 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). Accordingly, we conclude that section 552.108(a)(1) is applicable to Exhibits 4 and 8.

Next, you state that Exhibit 6 pertains to a case that concluded in a final result other than conviction or deferred adjudication. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code §552.108(a)(2). You state that Exhibit 6 relates to a criminal investigation that has concluded in a result other than conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to Exhibit 6.

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 186-87. Thus, with the exception of basic information, which must be released, the city may withhold Exhibits 4 and 8 under section 552.108(a)(1) of the Government Code and Exhibit 6 pursuant to section 552.108(a)(2) of the Government Code.

You also raise section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the city must withhold the marked Texas motor vehicle record information in Exhibits 5, 7, and 10 under section 552.130.

Finally, you claim that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. We agree that the city may withhold the social security numbers you have marked in Exhibits 5 and 9 under section 552.147 of the Government Code.¹

In summary, 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 and the marked CHRI under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Exhibit 3 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the city may withhold Exhibits 4 and 8 under section 552.108(a)(1) of the Government Code and Exhibit 6 under section 552.108(a)(2) of the Government Code. The city must withhold the marked Texas motor vehicle record information in Exhibits 5, 7, and 10 under section 552.130 of the Government Code. Finally, the city may withhold the social security numbers you have marked in Exhibits 5 and 9 under section 552.147 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

¹We 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.

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 challenge 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/jb

Ref: ID# 296857

Enc: Submitted documents

c: Mr. Clay Martin
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(w/o enclosures)