



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2008

Ms. Sandy Dudley  
Records Coordinator  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2008-03878

Dear Ms. Dudley:

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# 305482.

The City of Cleburne (the "city") received two requests from the same requestor for any and all reports involving two named individuals from January 2003 through January 2008, any information regarding specified addresses, and for two specified incident reports. You state that you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We also understand you to raise sections 552.130 and 552.147 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 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. The requestor asks, in part, for unspecified criminal records of two named individuals, which implicates these individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

The requestor also seeks specified incident reports. This portion of the request does not implicate the common-law privacy of the named individuals. We also note that you have submitted reports that do not list the named individuals as suspects, arrestees, or defendants. This information does not constitute a compilation of an individual's criminal history, and may not be withheld as such. However, we will address your remaining arguments for this information.

We now turn to your argument under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part 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). Upon review, we find that you have failed to demonstrate how the information at issue pertains to a juvenile suspect or offender involved in delinquent conduct or conduct indicating a need for supervision. Fam. Code § 51.03 (defining "delinquent

conduct” and “conduct indicating a need for supervision”). Accordingly, none of the submitted information may be withheld under section 552.101 on this basis.

We understand you to raise section 552.108 in conjunction with incident report numbers 244581, 265139, 263818, and Exhibits 3-a and 3-b of incident report number 265201. 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 . . . 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). 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 id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that these incident reports pertain to cases that did not result in a conviction or deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to incident report numbers 244581, 265139, 263818, and Exhibits 3-a and 3-b of incident report number 265201.

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 Publishing 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). The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public in *Houston Chronicle*). The city may withhold the remaining submitted incident report numbers 244581, 265139, 263818, and Exhibits 3-a and 3-b of incident report number 265201 under section 552.108(a)(2).

We understand you to raise section 552.130 of the Government Code for a portion of the remaining submitted information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or 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. Thus, the city must withhold the information you have highlighted in Exhibit 3 in incident report number 265201 under section 552.130 of the Government Code.

We also understand you to raise section 552.147 of the Government Code for a portion of the remaining submitted information. 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. Therefore, the city may withhold the information you have marked in Exhibit 3 of incident report number 265201 under section 552.147 of the Government Code.

In summary: (1) to the extent the city maintains law enforcement records depicting the named individuals suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy; (2) with the exception of basic information, the city may withhold the submitted incident report numbers 244581, 265139, 263818, and Exhibits 3-a and 3-b of incident report number 265201 under section 552.108(a)(2) of the Government Code; (3) the city must withhold the information you have highlighted in Exhibit 3 of incident report number 265201 under section 552.130 of the Government Code; and (4) the city may withhold the information you have marked in Exhibit 3 of incident report number 265201 under section 552.147 of the Government Code. The remaining submitted 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 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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', written over a horizontal line.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 305482

Enc. Submitted documents

c: Mr. Michael Audas  
20010 CR 590  
Nevada, Texas 75173  
(w/o enclosures)