



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2008

Mr. Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
City Attorney
City of Sachse
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2008-05941

Dear Mr. Gorfida:

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# 308898.

The City of Sachse (the "city"), which you represent, received a request for all city police records, including 9-1-1 calls, incident reports, witness statements, and arrest records, pertaining to two named individuals and a specified address. You state the city does not have any information responsive to the request for 9-1-1 calls.¹ You also state that you have provided some of the requested information to the requestor. You claim that a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted individual citation report does not pertain to the named individuals or the specified address in the request. Accordingly, this information, which we have marked, is not responsive to the request. Information that is not responsive to this

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ diss'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

request need not be released. Moreover, we do not address such information in this ruling. *See Bustamante*, 562 S.W.2d at 266; Open Records Decision No. 452 at 3 (1986).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² 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 demonstrated. *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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, requires the city to compile unspecified police records concerning the individuals at issue. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy.³

We note that you have submitted several call for service reports that pertain to the specified address, but do not list the named individuals as a suspect, arrestee, or criminal defendant. However, one of the reports contains personal financial information. Common-law privacy also protects some types of personal financial information. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). We have marked lien information in one of the call for service reports that constitutes personal financial information. Further, we find that there is not a legitimate public interest in the release of this information. Accordingly, the city must withhold the lien information we have marked under section 552.101 in conjunction with common-law privacy.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³ As our ruling for this information is dispositive, we need not address your argument against disclosure.

We note that portions of the call for service reports are protected by section 552.130 of the Government Code. This section 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[.]" Gov't Code § 552.130(a)(1). Therefore, the city must withhold the Texas motor vehicle record information that we have marked under section 552.130.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. The city must withhold the lien information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information that we have marked under 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 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).

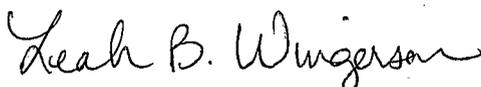
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 308898

Enc. Submitted documents

c: Ms. Julie Crawford
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(w/o enclosures)