



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 23, 2008

Mr. Bryan McWilliams  
Public Safety Legal Advisor  
City of Amarillo  
200 South East Third Avenue  
Amarillo, Texas 79101-1514

OR2008-17490

Dear Mr. McWilliams:

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# 330898.

The Amarillo Police Department (the "department") received two requests for: (1) any and all narratives, arrest reports, citations, or cover sheets related to a specific case number, including any communications between the Amarillo Police Department, the Amarillo City Attorney, and the Amarillo District Attorney and (2) all information pertaining to a named individual and/or the Cornerstone Outreach Center for three years. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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

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<sup>1</sup>You have marked Texas driver's license numbers within the submitted information. Therefore, we understand you to assert section 552.130 of the Government Code for this information.

adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). In this instance, you state that the submitted incident reports relate to a cases that did not result in a conviction or deferred adjudication. However, you also state the submitted incident reports pertain to cases that are inactive pending further information, and you do not inform us that these cases have concluded. Based on your statements and our review of the submitted documents, we are unable to determine how the cases at issue have concluded in a final result other than conviction or deferred adjudication. Therefore, we find that you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information, and it may not be withheld on that basis.

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 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the identities of victims of sexual abuse are excepted from public disclosure under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Furthermore, 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 a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we find that the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. We find, however, that you have failed to demonstrate how any of the remaining information you have marked constitutes highly intimate or embarrassing information, the release of which would be highly objectionable to a reasonable person. Thus, none of this remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public 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). Accordingly, the department must withhold the Texas driver’s license numbers you have marked, along with the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the marked Texas driver's license numbers under section 552.130 of the Government Code. The remaining information must be released.

Finally, you ask this office to issue the department a previous determination regarding the type of information at issue in the instant case. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue a previous determination for this type of information at this time. Accordingly, 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). If the governmental body does not file suit over 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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/cc

Ref: ID# 330898

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)