



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2009

Mr. Christopher D. Taylor
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-01323

Dear Mr. Taylor:

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# 334008 (LGL-08-1097).

The Waco Police Department (the "department") received a request for information relating to the requestor and another named individual. You indicate that some of the requested information either has been or will be released. You claim that other requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the instant request is for two categories of information: records of specified offenses involving the requestor in the last five years and arrest records for the other named individual. Two of the submitted police reports do not correspond to either of those categories of information and are therefore not responsive to this request. This decision does not address the non-responsive reports, which we have marked, and the department need not release that information.

We next note that section 552.101 of the Government Code is applicable in this instance.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law,

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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). We also find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The present request encompasses, among other things, specified records of incidents of domestic violence involving the requestor and the other named individual, as well as unspecified arrest records involving the other named individual. To the extent that it encompasses the specified records of domestic violence, this request does not implicate the other named individual’s privacy interests, and the department may not withhold any of those records on that basis under section 552.101. To the extent, however, that the department maintains any other information that depicts the other named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (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). This office has since determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information that is intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information under section 552.101 in conjunction with common-law privacy.

You raise section 552.108 of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 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 have marked the information that the department seeks to withhold under

section 552.108. You inform us that the marked information is related to pending criminal cases. Based on your representations, we conclude that the department may withhold the marked information under section 552.108(a)(1). *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).

You also raise section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the department must withhold under section 552.130. Although you have highlighted other driver's license and vehicle information that the department seeks to withhold under this exception, we note that the rest of the highlighted information is related to the requestor. Because section 552.130 protects personal privacy, the requestor has a special right of access to his own driver's license and vehicle information under section 552.023 of the Government Code. *See id.* § 552.023(a).² Therefore, that information may not be withheld from this requestor under section 552.130.³ *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself).

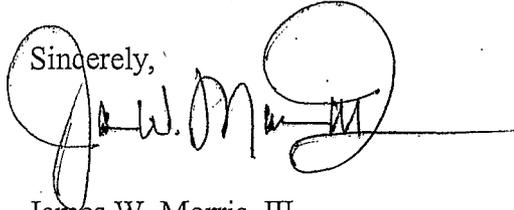
In summary: (1) to the extent that the department maintains any information, other than the specified records of domestic violence, that depicts the other named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy; (3) the department may withhold the marked information that is related to the pending cases under section 552.108(a)(1) of the Government Code; and (4) the department must withhold the Texas driver's license and motor vehicle information that we have marked under section 552.130 of the Government Code. The rest of the responsive information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Gov't Code* § 552.023(a).

³Should the department receive another request for these same records from a person who would not have a right of access to this requestor's private information, the department should resubmit these records and request another decision. *See Gov't Code* §§ 552.301(a) .302.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 334008

Enc: Submitted documents

c: Requestor
(w/o enclosures)