



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 17, 2009

Mr. R. Kinley Heggland, Jr.  
Senior Assistant City Attorney  
Office of the City Attorney  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2009-02058

Dear Mr. Heggland:

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# 338664.

The Wichita Falls Police Department (the "department") received a request for all police reports relating to the requestor and another named individual. You claim that 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 requestor seeks unspecified police reports for an individual for whom he is not an authorized representative. Section 552.101 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 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. 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 part, the requestor seeks unspecified police records pertaining to an individual other than himself. As such, this portion of the request implicates that individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted information, case number 04-071101, in which the named individual is not listed as a suspect, arrestee, or a criminal defendant. Thus, this report does not constitute a compilation of the individual's criminal history and may not be withheld under section 552.101 in conjunction with common-law privacy on that basis. We will address your argument against disclosure of this information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 adjudication. You have provided an affidavit stating that report number 04-071101 pertains to an incident that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to that information.

As you acknowledge, 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). Thus, with the exception of basic information, which you state you have released, the department may withhold report number 04-071101 under section 552.108(a)(2).

In summary, to the extent the department maintains any records depicting the individual other than the requestor as a suspect, arrestee, or criminal defendant, the department must withhold them under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold report number 04-071101 under section 552.108(a)(2) of the Government Code.<sup>1</sup>

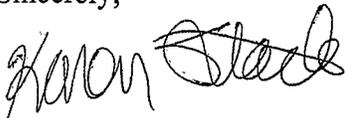
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<sup>1</sup>We note that some of the basic information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.

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.

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](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,

A handwritten signature in black ink, appearing to read "Karen Stack", written over a circular stamp or mark.

Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/eb

Ref: ID# 338664

Enc. Submitted documents

c: Requestor  
(w/o enclosures)