



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2009-06541

Dear Mr. Hawk:

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# 343091.

The Dallas Police Department (the "department") received a request for any information presented to a magistrate or judge in connection with the arrest of a named individual. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte*

¹We note that although you have marked information under sections 552.101 and 552.130 of the Government Code, you have made no arguments in support of these exceptions. *See Gov't Code* §§ 552.301, .302. However, as these exceptions are compelling reasons for non-disclosure, we will address the applicability of sections 552.101 and 552.130 to the information at issue.

Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked relates to a pending case, and that the Dallas County District Attorney's Office, as well as the department, request that this information be withheld. Based upon this representation and our review, we conclude that release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, the department may withhold the information you have marked under section 552.108(a)(1).

Next, 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. This exception 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. *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). Although a compilation of a private citizen's criminal history is generally not of legitimate concern to the public, in this instance there is a legitimate public interest in prior DWI arrest information in the context of the submitted DWI arrest report. Therefore, the information you have marked under section 552.101 in conjunction with common-law privacy is not confidential under section 552.101 and must be released.

Finally, you claim that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the department must withhold the Texas driver's license numbers you have marked under section 552.130.

In summary, (1) the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code; and (2) the department must withhold the information you have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 343091

Enc. Submitted documents

c: Requestor
(w/o enclosures)