



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

Ms. Catrina Purcell Longoria
Langley & Banack, Incorporated
Attorney for City of Eagle Pass
401 Quarry Street
Eagle Pass, Texas 78852

OR2009-07858

Dear Ms. Longoria:

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# 345432.

The City of Eagle Pass (the "city"), which you represent, received a request for all information pertaining to a specified incident. You state the city has released some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code 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). Generally, a governmental body claiming section 552.108(a)(1) 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 Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim that Exhibit C is excepted from public disclosure under section 552.108 of the Government Code. However, you have not explained how release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to Exhibit C and it may not be withheld under that exception.

We note that Exhibit C includes fingerprint information. 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. This section encompasses information that other statutes make confidential, such as section 560.003 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *Id.* §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold the fingerprint information we have marked within Exhibit C under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Next, we note that some of the information within Exhibit D contains criminal history record information (“CHRI”). Section 552.101 also encompasses chapter 411 of the Government Code, which makes CHRI generated by the National Crime Information Center or by the Texas Crime Information Center confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Gov’t Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note that an individual’s current involvement in the criminal justice system, including active warrant information, does not constitute criminal history record information. We have marked the CHRI within Exhibit D that the city must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You contend that the remaining documents within Exhibit D are confidential under the doctrine of common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) 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 prongs of this 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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. Upon review, we note that the remaining information pertains to an individual's current involvement in the criminal justice system. Accordingly, none of the remaining information within Exhibit D may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the remaining information is subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.¹ Gov't Code § 552.130. Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the fingerprint information we have marked within Exhibit C under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The city must withhold the CHRI we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

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,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 345432

Enc. Submitted documents

cc: Requestor
(w/o enclosures)