



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 16, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
Office of the City Attorney  
The City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2009-09846

Dear Ms. Sandoval-Walker:

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# 349316.

The El Paso Police Department (the "department") received a request for information related to incidents in which: (1) the requestor is a complainant; (2) the requestor is an arrestee; (3) a named person other than the requestor is a complainant; or (4) the same named person is an arrestee. You state that the department has released some information. You claim that the submitted 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 552.101 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 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. *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. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. This office has additionally found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). A compilation of an individual's criminal history is also 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The submitted information includes a "RAP Sheet" for the named person other than the requestor. We agree that this information constitutes a compilation of this person's criminal history. However, the remaining submitted information consists of multiple police reports, each of which involves the requestor as a complainant. Because this information is responsive to category (1) of the request, it does not constitute a compilation of any person's criminal history, and the department may not withhold this information on this basis. However, upon review, we conclude that the information we have marked within these reports is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold only the "RAP Sheet" and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.108(a)(1) of the Government Code for one of the submitted reports. This section 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 claiming section 552.108 must reasonably explain how and why 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 state that report 09-032108 relates to a pending criminal investigation. Based on this representation, we conclude that release of this information 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

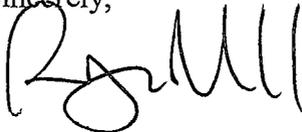
However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold submitted report 09-032108 under section 552.108(a)(1) of the Government Code.

In summary: (1) the department must withhold the submitted "RAP Sheet" and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) with the exception of basic information, the department may withhold submitted report 09-032108 under section 552.108(a)(1) of the Government Code; and (3) as you raise no further exceptions against disclosure, the department must release the remainder of the submitted information.

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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/rl

Ref: ID# 349316

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)