



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2009

Mr. Richard L. Bilbie  
Assistant City Attorney  
City of Harlingen  
P. O. Box 2207  
Harlingen, Texas 78551

OR2009-10084

Dear Mr. Bilbie:

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# 349651.

The Harlingen Police Department (the "department") received a request for 1) nine categories of information pertaining to any incidents that occurred at a specified establishment at a specified address for the years of the establishment's operation, as well as any incidents that occurred within a two mile radius of this establishment for the same time period; and 2) all information pertaining to a specified incident. You state you have released some of the information to the requestor, including basic information from the specified report and a call log pertaining to the specified location.<sup>1</sup> 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.

Initially, we note the requestor seeks nine categories of information pertaining to any incidents that occurred at a specified establishment at a specified address for the years of the establishment's operation, as well as any incidents that occurred within a two mile radius of this establishment for the same time period. However, you have only submitted a call log

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<sup>1</sup>We assume that the basic information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

responsive to this portion of the request. You indicate that the department is unable to further respond to categories 1 through 9 of the request, because the department does not organize its information "by businesses in the community and all events that happen at that business[.]" Instead, you state that the department's information is organized on the basis of specific cases. We note a governmental body may not decline to comply with the requirements of the Act on the grounds of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). We note a governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *See AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App. – Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Although you indicate you are unable to further respond to categories 1 through 9 of the request because the department's information is only organized on the basis of specific cases, we note that the submitted call log specifically references 98 incidents that occurred at or near the specified address and identifies the business establishment at issue in the request as the location of these incidents. Thus, to the extent the department maintained additional information responsive to the first nine categories of the request on the date the department received the request the department must release such information at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We will now address your argument under section 552.101 of the Government Code. 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. You raise section 552.101 in conjunction with 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.*, 540 S.W.2d at 685. 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. In this instance, however, we note that the

requestor seeks information related to a particular report involving the named individual at a specified location on a specified date. Accordingly, we find that this information does not implicate the named individuals' common-law right to privacy, and the department may not withhold any of the submitted information on this basis.

We next address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) 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 state that the submitted report is related to an ongoing criminal investigation and that release of this information would interfere with the investigation. Based on your representation and our review of the submitted information, we agree that section 552.108(a)(1) is applicable to the submitted information. *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). Thus, with the exception of basic information, which you state you have released, the department may withhold the submitted report under section 552.108(a)(1).

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/eeg

Ref: ID# 349651

Enc. Submitted documents

c: Requestor  
(w/o enclosures)