



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 4, 2009

Mr. Robert Massey  
Assistant City Attorney II  
City of Wichita Falls Legal Department  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2009-10773

Dear Mr. Massey:

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# 351008 (City ID # 149-1).

The City of Wichita Falls (the "city") received a request for all incident reports involving three named individuals and a specified address during a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the submitted documents include a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. 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 protected by other statutes, including section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of the accident report to a person who provides two or more of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided two of the three items of information specified by section 550.065(c)(4).

Therefore, the city must withhold the submitted accident report pursuant to section 550.065(b) of the Transportation Code.

Section 552.101 also 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 the test must be established. 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) (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 present request, in part, requires the city to compile unspecified law enforcement records concerning the named individuals. Therefore, to the extent that the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted reports that do not list the named individuals as suspects, arrestees, or criminal defendants. These reports do not implicate the privacy interests of the named individuals. Thus, we will address your remaining arguments against the disclosure of this information.

Section 552.108(a)(1) of the Government Code exempts 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide an affidavit from the city's police department stating that incident report numbers 07-100777, 08-031626, 08-051776, and 08-061913 relate to currently pending criminal investigations and prosecutions. Based on these representations and our review of the information at issue, we conclude that the 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. Civ. App.—Houston [14<sup>th</sup> 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, section 552.108(a)(1) is applicable to incident report numbers 07-100777, 08-031626, 08-051776, and 08-061913.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code §552.108(a)(2). The submitted affidavit also states that incident report number 06-081486 relates to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to incident report number 06-081486.

As you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, the city may withhold incident report numbers 07-100777, 08-031626, 08-051776, and 08-061913 under section 552.108(a)(1) of the Government Code and incident report number 06-081486 under section 552.108(a)(2) of the Government Code.<sup>1</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator’s or driver’s license or permit or a Texas motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas driver’s license information we have marked under section 552.130.

In summary, the city must withhold the submitted accident report pursuant to section 550.065(b) of the Transportation Code. To the extent that the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold incident report numbers 07-100777, 08-031626, 08-051776, and 08-061913 under section 552.108(a)(1) of the Government Code and incident report number 06-081486 under section 552.108(a)(2) of the Government Code. In addition, the city must withhold the Texas driver’s license information we have marked under section 552.130. The remaining information must be released.<sup>2</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</sup>We note the remaining information contains social security numbers not belonging to the requestor. 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.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/rl

Ref: ID# 351008

Enc. Submitted documents

c: Requestor  
(w/o enclosures)