



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2009

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

OR2009-11645

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# 353274.

The Wichita Falls Police Department (the "department") received a request for all information regarding several specified incidents involving named individuals. You indicate you will release a portion of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the named individuals. The department need not release nonresponsive information in response to this request and this ruling will not address that information.

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. Section 552.101 also encompasses information protected by 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. 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 demonstrated. *Id.* at 681-82. This office has found that a compilation of an individual's criminal history record information 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. Upon review, we find the information you have marked is of legitimate public interest. Accordingly, the department may not withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.108 provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (2) 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)(1)-(2). 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). Subsection 552.108(a)(1) protects information that pertains to a specific criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You state, and provide an affidavit stating, incident report numbers 08-110830, 08-090318, 08-090333, 08-071272, 08-082121, and 08-110821 relate to pending criminal cases. Based upon this representation, we conclude release of the information you have marked in these incident reports 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, section 552.108(a)(1) is applicable to the information you have marked in incident report numbers 08-110830, 08-090318, 08-090333, 08-071272, 08-082121, and 08-110821.

You also state, and provide an affidavit stating, incident report numbers 08-120261 and 08-120262 relate to closed criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the information you have marked in incident report numbers 08-120261 and 08-120262.

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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity and description of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the information you have marked in incident report numbers 08-110830, 08-090318, 08-090333, 08-071272, 08-082121, and 08-110821 under section 552.108(a)(1) and the information you have marked in incident report numbers 08-120261 and 08-120262 under section 552.108(a)(2).

Section 552.130 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 note this office does not withhold the state of issuance because in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the State of Texas. Further, you have failed to demonstrate how portions of the information you have marked consists of Texas motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, you have marked social security numbers under section 552.147 of the Government Code. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the department may withhold the social security numbers you have marked, in addition to the social security number we have marked, under section 552.147 of the Government Code.¹

In summary, with the exception of basic information, the department may withhold the information you have marked in incident report numbers 08-110830, 08-090318, 08-090333,

¹We note that 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.

08-071272, 08-082121, and 08-110821 under section 552.108(a)(1) and the information you have marked in incident report numbers 08-120261 and 08-120262 under section 552.108(a)(2). The department must withhold the information we have marked under section 552.130. The department may withhold the marked social security numbers in the remaining information under section 552.147. The remaining information must be released.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/rl

Ref: ID# 353274

Enc. Submitted documents

c: Requestor
(w/o enclosures)