



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2009

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-12123

Dear Ms. Villarreal:

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# 353726 (City of Waco # LGL-09-612).

The City of Waco (the "city") received a request for information related to a named person. You state that the city has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 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 also encompasses the doctrine of common-law privacy, which protects information if it (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. *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 elements of the 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, records related to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 411.082(2)(B) (CHRI does not include driving record information). Upon review, we find that no portion of the submitted information constitutes a criminal history compilation for the purposes of common-law privacy.

Section 552.101 also encompasses section 550.065 of the Transportation Code. The submitted information includes an ST-3 report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the city must withhold the submitted ST-3 report we have marked pursuant to section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 07-22454 relates to pending criminal investigation. Thus, based on your representation and our review, we determine that the release of the information you have marked in report number 07-22454 would interfere with the detection, investigation, or prosecution of crime. We, therefore, agree that section 552.108(a)(1) is applicable to this report. *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, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code in report number 07-22454.

Next, you state that report number 02-51865 pertains to a pending investigation. We note however that report number 02-51865 relates to an investigation of a motor vehicle burglary. The events that gave rise to this investigation occurred on August 8, 2002. The longest possible statute of limitations for the offense described in this report is two years. *See* Pen. Code § 30.04(d) (burglary of motor vehicle is Class A misdemeanor); Crim. Proc. Code art. 12.01(6) (indictment or information on misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years has elapsed since the events giving rise to the investigation in report number 02-51865 and you have not informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to report number 02-51865 and it may not be withheld on that basis.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). Upon review, we find that the information we have marked for release is not protected under section 552.130. Accordingly, except where marked for release, the city must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, pursuant to section 552.130 of the Government Code.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). Accordingly, the city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code.

In summary, must withhold the submitted ST-3 report we have marked pursuant to section 552.101 in conjunction with section 550.065(b) of the Transportation Code. The city may withhold the information you have marked under section 552.108(a)(1) of the Government Code in report number 07-22454. With the exception of the information we have marked for release, the city must withhold the marked information pursuant to section 552.130 of the Government Code. The city must also withhold the insurance policy number you have marked pursuant to section 552.136 of the Government Code. 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 353726

Enc. Submitted documents

c: Requestor
(w/o enclosures)