



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 16, 2009

Ms. Susan Camp-Lee  
City Attorney for the City of Round Rock  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2009-13088

Dear Ms. Camp-Lee:

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# 355443.

The Round Rock Police Department (the "department"), which you represent, received a request for video and other information pertaining to stops and searches made of a named individual. You claim that the submitted 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.

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). A governmental body must establish both prongs of this test to demonstrate the applicability of common-law privacy. *See 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) (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 requires the department to compile unspecified law enforcement records concerning a named individual. We note, however, that the requestor may be the authorized representative of the individual whose information is at issue. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023*. Therefore, if the requestor is not the named individual's authorized representative, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the named individual whose privacy interests are at issue, the department may not withhold any of the requested information from him under section 552.101 of the Government Code in conjunction with common-law privacy. We will address the department's arguments against the disclosure of any remaining information.

Section 552.101 also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). You state that the information submitted as Exhibit C involves juvenile conduct occurring after September 1, 1997 that resulted in criminal charges being

filed against a juvenile. None of the exceptions in section 58.007 appear to apply. Therefore, Exhibit C is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.<sup>1</sup>

Section 552.108 of the Government Code 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 the information submitted as Exhibit B pertains to a pending criminal investigation and prosecution. Based on your representation and our review, 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).

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*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You assert that some of the remaining information contains personal financial information and criminal history information that is confidential under common-law privacy. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Also, as noted above, a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *See Reporters Comm.*, 489 U.S. at 764. Upon review, we conclude that the personal financial information you have marked is intimate or embarrassing and of no

---

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

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

legitimate public interest. Accordingly, the department must withhold the information you have marked in green under section 552.101 of the Government Code in conjunction with common-law privacy in the remaining submitted information. However, we note that information relating to an individual's current involvement in the criminal justice system is not excepted under section 552.101 in conjunction with common-law privacy. Therefore, the department may not withhold any of the information you have marked in red in the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that "relates 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." Gov't Code § 552.130. Therefore, the department must withhold the Texas motor vehicle record information you have marked in yellow in the remaining submitted information under section 552.130 of the Government Code. The department must also withhold the Texas motor vehicle record information contained in the submitted videos pursuant to section 552.130 of the Government Code. If the department lacks the technical capability to redact the information subject to section 552.130 in the submitted videos, the department must withhold the videos in their entirety.

Finally, we note that the requestor appears to be the spouse of one of the individual's whose private information is at issue. As his wife's authorized representative, the requestor would have a right of access under section 552.023 to some of the information marked under section 552.101 in conjunction with common-law privacy and the some of information marked under section 552.130, which protects personal privacy. *See id.* § 552.023(a). If the requestor is his wife's authorized representative, then he has a right of access to her private information, and that information, which we have marked, may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy or section 552.130. If the requestor is not his wife's authorized representative, then the department must withhold all of the information you have marked in green and yellow in the remaining information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy unless the requestor has a right of access to this individual's private information under section 552.023 of the Government Code. The department must withhold Exhibit C under section 552.101 in conjunction with 58.007 of the Family Code. With the exception of the basic information, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The department must withhold the personal financial information you have marked in green under section 552.101 in conjunction with common-law privacy and the Texas motor vehicle record information you have marked in yellow and contained in the submitted videos under section 552.130, except to the extent that

the requestor has a right of access to the information under section 552.023 of the Government Code. The remaining submitted information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 355443

Enc. Submitted documents

c: Requestor  
(w/o enclosures)