



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 22, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
Attorney for City of Flower Mound
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-13309

Dear Mr. Griffith:

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# 356058.

The Flower Mound Police Department (the "department"), which you represent, received a request for information pertaining to any incidents involving a named individual, including incidents occurring at a specified address. You claim that the requested 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 a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not involve the named individual. The department need not release non-responsive information in response to this request, and this ruling will not address that 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). To demonstrate the applicability of common-law privacy, both prongs of this

test must be satisfied. *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. United States 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. Moreover, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

In this instance, the request requires the department to compile the criminal history of the named individual, thus implicating her right to privacy. Accordingly, to the extent the department maintains records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual. Thus, we will address your remaining argument against disclosure for this information.

You contend that the information at issue is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You state that the information at issue relates to a concluded case where no criminal charges were filed. Based on your representations, we conclude section 552.108(a)(2) is generally applicable.

However, section 552.108 is limited by section 552.108(c), which provides that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Basic information refers to the information set forth in *Houston Chronicle Publishing 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information not excepted from disclosure by 552.108 in *Houston Chronicle*). In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch ("CAD") report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information

expressly held to be public in *Houston Chronicle*). In this instance, the information at issue consists of a call report. Because the information in that report is basic information, the call report may not be withheld under section 552.108(a)(2) and must be released in its entirety.

In summary, to the extent the department maintains records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 356058

Enc. Submitted documents

cc: Requestor
(w/o enclosures)