



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 30, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton, 3rd Floor
Fort Worth, Texas 76102

OR2009-13738

Dear Mr. Phillips:

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# 356741 (City of Fort Worth PIR# 4576-09).

The City of Fort Worth (the "city") received a request for a specified police report and other domestic violence reports involving two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that you have redacted social security numbers and Texas driver's license numbers from the submitted documents. The city is authorized to redact social security numbers pursuant to section 552.147(b) of the Government Code and certain Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ We note, however, that the requestor is an authorized representative of an individual whose Texas driver's license number has been redacted in the submitted information. Thus, the requestor has a right of access to this individual's Texas driver's license number under section 552.023 of the Government Code, and that information may not be withheld from this requestor under section 552.130. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning herself).

¹Section 552.147(b) 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.

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 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. This office has found that 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). We have also found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert that the present request requires the city to compile the criminal history of a named individual. After reviewing the request and the submitted information, however, we believe the requestor is seeking specific domestic violence reports involving her client and the named individual. Accordingly, we find that the named individual's right to privacy has not been implicated by this request and none of the submitted information may be withheld under common-law privacy.

Next, you claim that the specified report is excepted under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state the specified report relates to a pending criminal case. Based on your representation and our review, we conclude release of the specified report 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).

We note, however, that 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* 531 S.W.2d at 186-87. Accordingly, with the exception of the basic information, the city may withhold the specified report under section 552.108(a)(1) of the Government Code.

Finally, section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651–52, *amended by* Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557 (Vernon) (to be codified as an amendment to Gov’t Code § 552.137(c)). You seek to withhold the e-mail address of the requestor’s client. Because section 552.137 protects personal privacy, the requestor has a right of access to her client’s e-mail address pursuant to section 552.023. *See id.* § 552.023. Accordingly, the e-mail address you have marked may not be withheld from this requestor.

In summary, with the exception of basic information, the city may withhold the specified report under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.²

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

²We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Therefore, if the city receives another request for this particular information from a different requestor, then the city must again seek a decision from this office.

Ref: ID# 356741

Enc. Submitted documents

c: Requestor
(w/o enclosures)