



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Mr. Charles E. Zech
Attorney for City of Live Oak
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-13934

Dear Mr. Zech:

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# 357204.

The Live Oak Police Department (the "department"), which you represent, received a request for police incident and complaint reports pertaining to eight specified individuals during a specified period of time. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 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."¹ Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. However, 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 is for all police incident and complaint reports pertaining to eight named individuals during a specified time period. This request requires the department to compile the named individuals' criminal history. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, we note that you have submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individuals. Thus, we will address your arguments against the disclosure of this information.

You claim that the some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b) of the Government Code provides, in pertinent part, as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(b)(1)-(2). Generally speaking, subsection 552.108(b)(1) is mutually exclusive of subsection 552.108(b)(2). Section 552.108(b)(1) may be applicable to internal records of a law enforcement agency, provided the law enforcement agency reasonably explains how and why release of the information at issue would interfere with law enforcement or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) exception intended to protect information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine law enforcement efforts). Section 552.108(b)(2) is applicable only if the internal records in question relate to a concluded case that did not result in a conviction or a deferred adjudication. Upon review, we find the department makes no arguments and therefore has not demonstrated how release of the information you have marked would interfere with law enforcement or crime prevention. Further, the department has not demonstrated that the information at issue relates to a concluded case that did not result in a conviction or deferred adjudication. Therefore, you may not withhold the information at issue under section 552.108(b)(1) or section 552.108(b)(2).

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a Texas motor vehicle title or registration issued by an agency of this state. 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 department must withhold the Texas motor vehicle record information you have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of the information we have marked for release, the department must withhold the Texas motor vehicle record information you have marked under section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 357204

Enc. Submitted documents

c: Requestor
(w/o enclosures)