



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2009

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2009-14678

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# 358427.

The Flower Mound Police Department (the "department"), which you represent, received a request for a specified incident report, as well as information relating to any incidents involving either of two named individuals at a specified address during a specified period of time. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found 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.

In part, the present request requires the department to compile unspecified police records concerning the named individuals. This request implicates such individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records other than the specifically requested report depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted the specified report and a computer-aided dispatch ("CAD") report that does not list either 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 argument under section 552.108 of the Government Code for this information.

Next, we note the specified report includes information that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed information, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold the court-filed information under section 552.108 of the Government Code.

Section 552.108(a)(1) 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 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to pending criminal investigations. Based on this representation, we conclude 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. 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).

However, section 552.108 of the Government Code 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 186-88; See also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The information at issue contains a CAD report. In Open Records Decision No. 649 (1996), this office concluded information contained in a 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*). Therefore, because the information contained in the CAD report is basic information, that information may not be withheld under section 552.108(a)(1). Thus, with the exception of basic information and the court-filed document, the department may withhold incident report number 09023717 under section 552.108(a)(1) of the Government Code.

We note the submitted CAD report contains Texas motor vehicle record information subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information the department must withhold under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records other than the specifically requested report depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information and the information subject to section 552.022(a)(17), the department may withhold incident report number 09023717 under section 552.108(a)(1) of the Government Code. The department must withhold the marked Texas motor vehicle record information from within the submitted CAD report pursuant to section 552.130 of the Government Code. The remaining information must be released.<sup>1</sup>

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.

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<sup>1</sup>We note the basic information contains an arrestee's social security number. Section 552.147(b) of the Government Code 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. Gov't Code § 552.147(b).

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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/cc

Ref: ID# 358427

Enc. Submitted documents

c: Requestor  
(w/o enclosures)