



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2009

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

OR2009-14791

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# 358804.

The Town of Flower Mound (the "town"), which you represent, received a request for records related to five specified incident reports, and all records related to a named individual. You claim that the submitted 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.

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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Here, the requestor asks for records related to five specified incident reports, and the submitted information consists only of records related to those specified reports. Accordingly, we find that this request does not require the town to compile unspecified law enforcement records and thus does not implicate the named individual's common-law right to privacy. Thus, the town may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you raise section 552.108 of the Government Code for all the submitted information, except the information related to case number 03-33042.¹ Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" 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. You state that the submitted information, except the information related to case number 03-33042, pertains to cases that did not result in a conviction or a deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable in this instance.

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 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), and includes a detailed description of the offense. Thus, with the exception of basic information and information related to case numbers 03-33042 and 03-33092, you may withhold the submitted information from disclosure based on section 552.108(a)(2).

We note that portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 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). Accordingly, the town must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information and information related to case numbers 03-33042 and 03-33092, the town may withhold the submitted information from

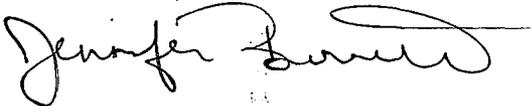
¹As submitted case number 03-33092 pertains to the same criminal trespass incident at issue in case number 03-33042, we understand you to inform us that neither 03-33092 nor 03-33042 fall under section 552.108(a)(2) of the Government Code.

disclosure based on section 552.108(a)(2). The town must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 358804

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains social security numbers. 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.