



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-15241

Dear Ms. Quinn:

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# 359671.

The Cedar Park Police Department (the "department") received two requests from the same requestor for all records pertaining to a named individual, including a specified incident report. Additionally, the second request seeks any records pertaining to the named individual's wife. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. This exception encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You argue that the requests require the department to compile unspecified law enforcement records concerning the individuals at issue. However, upon review of the submitted information, we find that only incident report number 0906-0018 involves the one of the named individuals as a suspect, arrestee, or criminal defendant. Because the requestor specifically asks for this report, it is not part of a compilation of that individual's criminal history and may not be withheld on that basis. Because none of the remaining information lists either named individual as a suspect, arrestee, or criminal defendant, we find that none of the submitted information may be withheld as a compilation of criminal history. We will, however, address your remaining arguments to withhold the submitted information.

You assert that incident report number 0906-0018 is excepted 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." 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 Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 0906-0018 relates to a pending criminal prosecution. Based on this representation, we conclude that the 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., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we agree that section 552.108(a)(1) is applicable to incident report number 0906-0018.

You also assert that the information marked as Exhibit C in the first request, which consists of call sheet numbers 0310-2500, 0701-1482, 0801-0984, and 0802-1787, is excepted under section 552.108(a)(2) 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. 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 information in Exhibit C of the first request pertains to criminal investigations that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is generally applicable to this information.

However, as you acknowledge, 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*, and includes

an arrestee's social security number. In this instance, we note that Exhibit C of the first request consists entirely of call sheets. In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch 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 this information is basic information, the department may not withhold call sheet numbers 0310-2500, 0701-1482, 0801-0984, and 0802-1787 under section 552.108(a)(2) of the Government Code. However, with the exception of basic information, the department may withhold incident report number 0906-0018 under section 552.108(a)(1) of the Government Code. We will also address your remaining argument against disclosure of the remaining submitted information.

We note a portion of the information in call sheet number 0310-2500 may be excepted from disclosure under common-law privacy. Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert that the portions of the remaining information you have marked are excepted from disclosure under 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 agree that the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, the department may withhold the social security number we have marked pursuant to section 552.147 of the Government Code.¹

¹We note that 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.

In summary, with the exception of basic information, you may withhold incident report number 0906-0018 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The department may withhold the arrestee's social security number we have marked pursuant to section 552.147 of the Government Code. The remaining information must be released to the requestor.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 359671

Enc. Submitted documents

c: Requestor
(w/o enclosures)