



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2009

Mr. Joe Torres, III
Attorney at Law
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2009-15766

Dear Mr. Torres:

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# 360979.

The City of Alice (the "city"), which you represent, received a request for police reports pertaining to a named individual. We note you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted 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.

We begin by noting that you have submitted information to this office that is not responsive to the instant request. The request seeks police reports involving a named individual. You have submitted information, which we have marked, that does not involve the named individual. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release that information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Section 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 § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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). 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. 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 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. The present request seeks a copy of all police reports for a named individual. We find that this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted reports that do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, we will address your argument under section 552.108 of the Government Code. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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;

...

(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(a)(1)-(2), (b)(1)-(2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Upon review, we note that the information at issue consists of numerous police reports pertaining to more than one incident. You have not identified which of these reports pertain to pending criminal investigations or prosecutions. Nor have you identified which of these reports, if any, pertain to cases that concluded in a result other than conviction or deferred adjudication. Consequently, you have failed to demonstrate the applicability of section 552.108 to the information at issue. We therefore conclude that the city may not withhold any portion of the submitted information pursuant to section 552.108 of the Government Code.

We note, however, the documents contain information subject to section 552.130 of the Government Code.² Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary: (1) to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy; (2) the city must withhold the Texas motor vehicle record information we have marked under section 552.130; and (3) any remaining information must be released.

²The 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).

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 360979

Enc. Submitted documents

c: Requestor
(w/o enclosures)