



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2009

Mr. Joe Torres, III
City Attorney
City of Alice
216 N. Texas Boulevard, Suite 2
Alice, Texas 78332

OR2009-15980

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# 361078.

The Alice Police Department (the "department") received a request for all incident reports involving a named individual during a specified period. You claim the requested reports are 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 satisfied. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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 all of the department's records involving a named individual. This request, in part, requires the department to compile the named individual's criminal history. Thus, this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual 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. You submitted eleven reports which do not list the named individual as a suspect, arrestee, or criminal defendant. Accordingly, we will address your arguments against disclosure of these reports.

Report number 2007012903 relates to an alleged sexual assault. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the requestor knows the identity of the alleged sexual assault victim listed in the report. Thus, the incident report we marked must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.108 of the Government Code, which 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 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You provide a letter from the department's Chief of Police stating any responsive reports would relate to a case that is under investigation. The submitted reports, however, pertain to a number of different criminal incidents. The letter does not indicate, and you do not explain, what the ongoing investigation is about or whether any submitted report is the subject of this investigation. Further, you do not explain how the release of information

pertaining to multiple incidents would interfere with the investigation of one particular case. Accordingly, the department has failed to establish that release of the submitted reports would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must label responsive information to indicate which exceptions apply to which parts of the documents). Therefore, the department may not withhold any of the remaining reports under section 552.108.

Upon review, however, some of the information in report number 2006008928 is protected by common-law privacy. This office has found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We marked the information in report number 2006008928 that reveals a disability or a specific illness. We conclude this is highly intimate or embarrassing information of no legitimate public interest. Accordingly, the information we marked is confidential and must be withheld under section 552.101 in conjunction with common-law privacy.

Finally, the remaining information contains Texas motor vehicle record information that is excepted under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We marked Texas motor vehicle record information which the department must withhold under section 552.130.

In summary, to the extent the department maintains law enforcement records depicting the named individual 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. The department must withhold report number 2007012903 in its entirety, as well as the information we marked in report number 2006008928, under section 552.101 of the Government Code in conjunction with common-law privacy. Finally, the department must withhold the Texas motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.¹

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.

¹The remaining information includes an unredacted 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.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 361078

Enc. Submitted documents

cc: Requestor
(w/o enclosures)