



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-16093

Dear Ms. Aguilar:

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# 361462.

The Corpus Christi Police Department (the "department") received a request for 1) all reports involving a named individual as a complainant or victim of four specified offenses, 2) all reports involving a specified address from July 2004 to the present, and 3) "all pawn shop transactions" involving a named individual. You state you have made some of the requested information available to the requestor. You state you do not have information responsive to the third category of the request.¹ You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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. *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 prongs of this 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. 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. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

The request seeks all reports related to an address as well as reports involving a named individual as a complainant or victim. As such, we find that the present request is not a request for a compilation of an individual's criminal history and does not implicate the named individual's right to privacy. Therefore, the department may not withhold any portion of the requested information under section 552.101 in conjunction with common-law privacy.

You raise section 552.108 of the Government Code for portions of the submitted information. 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 that the reports you have marked pertain to pending criminal investigations or prosecutions. You also state that case number 0804220140, which you have marked, relates to "an inactive criminal case that may be opened if additional leads develop." Based on these representations, 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 section 552.108(a)(1) is applicable to the reports you have marked.

You also raise section 552.108(a)(2) of the Government Code for case number 0709100180. 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[.]” Gov’t Code § 552.108(a)(2). 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 case number 0709100180, which you have marked, relates to a closed criminal case that did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude that section 552.108(a)(2) is applicable to case number 0709100180.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the reports you have marked under section 552.108(a)(1), as well as case number 0709100180 under section 552.108(a)(2) of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the reports you have marked under section 552.108(a)(1), as well as case number 0709100180 under section 552.108(a)(2) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released.

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,

²As our ruling is dispositive, we need not address your argument under section 552.130 for this information.

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 cursive script that reads "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 361462

Enc. Submitted documents

cc: Requestor
(w/o enclosures)