



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2009

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2009-16584

Dear Mr. Noga:

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#362067.

The City of Coppell (the "city"), which you represent, received a request for dashboard camera footage for a specified officer on a specified date and documents pertaining to the named officer's activities on that date. You state you will release some of the information to the requestor. You also state you do not maintain information responsive to a portion of the request.¹ 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information 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 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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that the requestor seeks dashboard camera footage from a specified time period. This request does not require the city to compile criminal history, and thus does not implicate the privacy interest of any individuals. Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code as a compilation of an individual's criminal history.

You assert that the submitted information 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You generally state that the submitted information relates to multiple pending prosecutions. However, you have not demonstrated how the release of the submitted information would interfere with the detection, investigation, or prosecution of a specific crime. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108, the city may not withhold the submitted information under section 552.108 of the Government Code.

You state that some of the remaining information in the submitted DVD recordings is excepted 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 note the requestor has a right of access to his own information pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the submitted DVD

recordings also contain Texas license plate numbers and driver's license numbers pertaining to individuals other than the requestor. Accordingly, with the exception of the requestor's motor vehicle information, which must be released, the city must withhold this information pursuant to section 552.130. However, if the city lacks the technical capacity to redact this information from the submitted DVD recordings, then the city must withhold the DVD recordings in their entirety under section 552.130. *See* Open Records Decision No. 364 (1983).

In summary, the city must withhold the Texas license plate numbers and driver's license numbers in the submitted DVD recording 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 362067

Enc. Submitted documents

cc: Requestor
(w/o enclosures)