



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2010

Mr. Robert Massey  
Assistant City Attorney II  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2010-00018

Dear Mr. Massey:

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# 366192 (City ID# 275).

The Wichita Falls Police Department (the "department") received a request for all records pertaining to a named individual, including records regarding domestic abuse. You claim that the requested information is 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. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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, in part, requires the department to compile unspecified records concerning the individual at issue. However, the submitted information relates only to domestic abuse records, which the requestor specifically sought in her request. Therefore, the submitted information does not constitute a criminal history compilation, and none of it may be withheld under section 552.101 in conjunction with common-law privacy.

You raise section 552.108(a)(2) 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 . . . 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). You also raise section 552.108(b)(2), which excepts "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us, and have provided a letter from the department's chief of police stating, that the submitted information is related to a police investigation "that *has not resulted* in a conviction or deferred adjudication" (emphasis added). You also state that "[t]o the extent that a case resulted in no conviction or deferred adjudication regarding the suspect, the [c]ity contends that the investigation records requested are protected from disclosure." We note that section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case "that *did not result* in conviction or deferred adjudication." Gov't Code § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations and the police chief's letter, we find that you have not demonstrated that the submitted information falls within the scope of section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A). We therefore conclude that the department may not withhold any of the submitted information under section 552.108 of the Government Code. As you raise no further exceptions against disclosure, the submitted information must be released to the requestor.<sup>1</sup>

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<sup>1</sup>We note the submitted information contains a social security number. We 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.

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](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# 366192

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)