



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-03765

Dear Ms. De La Garza:

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#376476.

The Houston Police Department (the "department") received two requests from the same requestor for copies of all records pertaining to two individuals, all calls for service for two specified addresses, and the 911 dispatch recording tape and transcript from a specified incident. You state there are no responsive 911 dispatch recordings due to the six month retention period. We note the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim that the submitted 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. 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

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. 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. 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. In this instance, the requestor asks the department to compile unspecified law enforcement records pertaining to two specified individuals. This request implicates these individuals' right to privacy. Thus, to the extent the department maintains law enforcement records depicting the specified individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note, however, that you have submitted a report, incident report #17523508 and the associated 911 transcript, which lists the specified individuals as a victim and witness and not as suspects, arrestees, or criminal defendants. Thus, this information does not constitute a compilation of the individuals' criminal history and incident report #17523508 and the associated 911 transcript may not be withheld under section 552.101 on this basis. Accordingly, we will address your argument under section 552.108(a)(1) 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: (1) 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(a) 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report #175235408 and the associated 911 transcript relate to a pending criminal investigation. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to incident report #175235408 and the associated 911 transcript.

As you acknowledge, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the department must release the types of basic information listed in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). With the exception of basic information, the department may withhold incident report #175235408 and the associated 911 transcript pursuant to section 552.108 of the Government Code.

In summary, to the extent the department maintains any records identifying the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold incident report #175235408 and the associated 911 transcript pursuant to section 552.108 of the Government Code.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.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#376476

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.