



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-00498

Dear Mr. Alicie:

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# 405476.

The Baytown Police Department (the "department") received a request for a copy of case number 2010-39335. You state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.151 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that the submitted information includes information that you indicate is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

You have marked information to be withheld under section 552.108(a)(1) of the Government Code. This section provides, in relevant part:

¹ Section 552.147(b) authorizes a government 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(b).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(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 the requested records pertain to a pending criminal prosecution. Based on your representation and our review, we conclude that release of the information at issue 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. Civ. App.— Houston [14th Dist.] 1975) (specifying law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree that the department may withhold the portions of the report you have marked under section 552.108(a)(1) of the Government Code.

You have also marked information to be withheld under section 552.101 of the Government Code. This section excepts from disclosure “information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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. 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. 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, noting 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. However, an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI for the purposes of section 552.101. Upon review, we find that you have not explained how the information you have marked constitutes highly intimate or embarrassing information of no

legitimate public concern. Accordingly, the department may not withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

You have further marked information to be withheld under section 552.130 of the Government Code. This section excepts from disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]" Therefore, the department must withhold the information you have marked under section 552.130.²

Finally, you have marked information to be withheld under section 552.151 of the Government Code. This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You inform us that the information you have marked under section 552.151 relates to undercover police officers. You represent that release of this information would subject these undercover officers to a "substantial threat of physical harm." Based on your representations, we conclude you have demonstrated that release of the information you have marked would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.151.

In summary, the department may withhold the information you have marked under section 552.108. The department must withhold the information you have marked under sections 552.130 and 552.151. 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

² We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID# 405476

Enc. Submitted documents

c: Requestor
(w/o enclosures)