



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2011

Chief James S. Kelley  
Sweetwater Police Department  
P.O. Box 450  
Sweetwater, Texas 76556

OR2011-13996

Dear Chief Kelley:

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# 431615.

The Sweetwater Police Department (the "department") received a request for reports regarding a named individual filed during a specified time period, including a specified arrest. You claim 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 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 established. *Id.* at 681-82. A compilation of an individual's criminal history record information 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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, this request is also for information relating to a specified incident, and you have submitted information responsive to this portion of the request. Such a request does not implicate an individual's common-law right of privacy. Accordingly, the department may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a case that has been filed with the county attorney and "therefore, this is an active case." However, you also state the disposition of the case is unknown to the department. We note the submitted information indicates it pertains to a case that resulted in the conviction of the defendant. Because you have not established the submitted information relates to a pending investigation or prosecution or otherwise shown how release of this information will interfere with the detection, investigation, or prosecution of crime, you have failed to meet your burden under section 552.108(a)(1) of the Government Code, and the department may not withhold the submitted information on that basis. We understand you to also contend the information at issue reflects the mental impressions or legal reasoning of an attorney representing the State of Texas. *See Gov't Code § 552.108(a)(4)*. However, the submitted information consists of department records pertaining to the incident at issue. You have not demonstrated how this information either

was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Thus, we conclude you have failed to explain how the submitted information is subject to section 552.108(a)(4), and the department may not withhold it on that basis. As you raise no further exception to disclosure, the department must release the submitted information.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 431615

Enc. Submitted documents

c: Requestor  
(w/o enclosures)