



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

Chief James S. Kelley
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2012-04486

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# 448746.

The Sweetwater Police Department (the "department") received a request for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.132 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 it (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 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. You state the present request requires the department to compile the criminal history of an individual. However, we note the requestor seeks information related to a specified incident. This information does not implicate the privacy interests of any individual. Therefore, the department may not withhold the

submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

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[.]” Gov’t Code § 552.108(a)(1). 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 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 pertains to a pending criminal investigation. Based on this representation and our review, we determine release of this information 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information includes, among other items, an identification and description of the complainant, but does not include identifying information of a victim, unless the victim is also the complainant. *See* ORD 127 at 3-4. In this instance, we note the victim is not the complainant. The victim’s address, however, is the location of the crime, and therefore is basic information; thus, we will address your remaining argument for the victim’s address. With the exception of basic front page information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.132 of the Government Code provides, in relevant part, the following:

(b) The following information held by the crime victim’s compensation division of the attorney general’s office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether

the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Gov't Code § 552.132(b), (d). The remaining information is held by the department, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of the department who elected in accordance with section 552.132(d). Accordingly, we conclude the department may not withhold any portion of the remaining information under section 552.132 of the Government Code.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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) 673-6339. 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/ag

Ref: ID# 448746

Enc. Submitted documents

c: Requestor
(w/o enclosures)