



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2012

Ms. Tiffany Bull  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-200  
P.O. Box 1065  
Arlington, TX 76004-1065

OR2012-05604

Dear Ms. Bull:

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# 452846 (Arlington Police Department Reference No. 6866).

The Arlington Police Department (the "department") received a request for any and all reports involving two named individuals. 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. This section encompasses the common-law right to 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 met. *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. In this instance, the requestor asks for unspecified law enforcement records concerning two named individuals. This request requires the department to compile unspecified law enforcement records concerning the named individuals, thus implicating such individuals' rights to privacy. Therefore, to the extent the department maintains any law enforcement records depicting these individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted report numbers 07-36292 and 08-66196 in which these named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of either individual and may not be withheld as a compilation of their criminal histories under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, we will consider your remaining argument under section 552.108 of the Government Code for this information.

Section 552.108(a)(1) 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(a)(1) 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 that report number 07-36292 pertains to an open and active criminal investigation, the release of which will interfere with the detection, investigation, and prosecution of a crime. Based upon this representation, we agree section 552.108(a)(1) of the Government Code is applicable to report number 07-36292. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. 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).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that report number 08-66196 relates to a criminal case that was no-billed by the Tarrant County Grand Jury, concluding the investigation in a result other than a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to report number 08-66196.

However, 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report number 07-36292 pursuant to section 552.108(a)(1) and report number 08-66196 pursuant to section 552.108(a)(2).

In summary, to the extent the department maintains any information that lists the named individuals as suspects, arrestees, or criminal defendants, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold report numbers 07-36292 and 08-66196 under section 552.108 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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/bhf

Ref: ID# 452846

Enc. Submitted documents

c: Requestor  
(w/o enclosures)