



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2010

Mr. Tom Donnelly
City Secretary/Administrator
City of Hallettsville
101 North Main
Hallettsville, Texas 77964-2727

OR2010-12166

Dear Mr. Donnelly:

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# 389981.

The City of Hallettsville (the "city") received a request for information pertaining to the requestor and a named individual, including information pertaining to a specified disturbance. You state the city has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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 established. *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 and noted that individual has significant privacy interest in

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

In this instance, the request is for information pertaining to the requestor and a named individual, including information pertaining to a specified disturbance. Thus, this request, in part, requires the city to compile unspecified law enforcement records pertaining to the named individual. Therefore, with the exception of the information pertaining to the specified disturbance, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted report number IR-09-000104, which pertains to the specified disturbance. Because report number IR-09-000104 was specifically requested by the requestor, it does not implicate the privacy interests of the named individual and it may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. We also note that you have submitted report number IR-10-000187, which does not list the named individual as a suspect, arrestee, or criminal defendant. Report number IR-10-000187 also does not implicate the privacy interests of the named individual as part of his compiled criminal history. However, we will address your argument against the disclosure of portions of report numbers IR-09-000104 and IR-10-000187.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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. *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 report numbers IR-09-000104 and IR-10-000187 pertain to criminal investigations by the city's police department that have been concluded and that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to the information you have marked in report numbers IR-09-000104 and IR-10-000187.

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). Such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. 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), and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have marked the entire narrative portions of report numbers IR-09-000104 and IR-10-000187 as information you seek to withhold under section 552.108. However, the remaining portions of the reports do not contain information

sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See* ORD 127. Accordingly, we determine that the city must release a sufficient portion of the narrative sections of report numbers IR-09-000104 and IR-10-000187 to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. The city may withhold the remaining information you have marked in report numbers IR-09-000104 and IR-10-000187 under section 552.108(a)(2) of the Government Code.

In summary, with the exception of information pertaining to the specified disturbance, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of a sufficient portion of the narrative sections of report numbers IR-09-000104 and IR-10-000187 to encompass a detailed description of the offenses, the city may withhold the information you have marked in report numbers IR-09-000104 and IR-10-000187 under section 552.108(a)(2) 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) 673-6839. 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 389981

Enc. Submitted documents

c: Requestor
(w/o enclosures)