



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton St., 3rd Floor
Fort Worth, Texas 76102

OR2010-12520

Dear Ms. Sangsvang:

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# 391052 (Fort Worth PIR No. W001436).

The City of Fort Worth (the "city") received a request for all reports pertaining to two named individuals at a specified address for a specified time frame. You state you have redacted Texas motor vehicle record information relating to individuals other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the city.¹ You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.² 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. Section 552.101 encompasses the doctrine of common-law privacy, which

¹See Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

²Section 552.147(b) of the Government Code 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.

protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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. United States 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 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.

The present request seeks information pertaining to two named individuals. We find that this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, that you have submitted information in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and thus does not implicate the individuals' right to privacy. Accordingly, we will address your arguments for this information.

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, and provide a letter from the city's police department reflecting, that report number 09-85828 relates to a pending criminal case. Based on these representations and our review of the information at issue, we conclude that the city has demonstrated 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; 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 city may withhold report number 09-85828 under section 552.108(a)(1) of the Government Code.

We note some of the remaining information contains information protected by common-law privacy. As noted above, common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We understand you have redacted an e-mail address pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.137 of the Government Code provides “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. See *id.* § 552.137(c). We have marked an additional e-mail address that is not of the type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address you have redacted, in addition to the e-mail address we have marked, under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 09-85828 under section 552.108 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the e-mail address you have redacted, in addition to the e-mail address we have marked, under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. The remaining information must be released.³

³We note the information being released contains confidential information to which the requestor has a right of access. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning herself). Therefore, if the city receives another request for this same information from a different requestor, then the city should again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over a horizontal line.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 391052

Enc. Submitted documents

cc: Requestor
(w/o enclosures)