



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 13, 2010

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2010-15625

Dear Mr. Scott:

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# 396683.

The City of Conroe (the "city") received a request for all reports and notes of the city's police department related to reports filed by the requestor and a named individual. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 common-law right of 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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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

¹Section 552.147(b) of the Government Code authorizes a governmental 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.

organs. *Id.* at 683. A compilation of an individual's criminal history is also 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 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.

You assert that the present request requires the city to compile the criminal history of an individual. After reviewing the request and the submitted information, however, we find the requestor is seeking specified incident reports in which she is listed as a suspect. Further, we note the requestor has a special right of access under section 552.023 of the Government Code to information that implicates her own privacy interests. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). We also note that the submitted information does not contain information that lists the named individual as a suspect, arrestee, or criminal defendant. Accordingly, we find this request does not implicate either individual's common-law right to privacy. Thus, the city may not withhold the submitted information 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(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 the submitted information in Exhibit A-2 relates to pending criminal cases that may be subject to future prosecution. Based on your representation and our review, we conclude that the release of the information in Exhibit A-2 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in 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 conviction or deferred

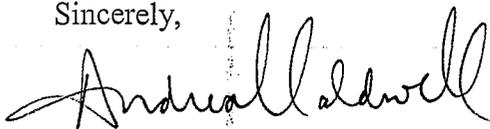
adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information in Exhibit A-1 relates to concluded investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the information in Exhibit A-1.

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Thus, the city must release the types of basic information listed in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the city may withhold the information in Exhibit A-2 under section 552.108(a)(1) of the Government Code and the information in Exhibit A-1 under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/em

Ref: ID# 396683

Enc. Submitted documents

c: Requestor
(w/o enclosures)