



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2011

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
3304 Community Boulevard
Killeen, Texas 76542

OR2011-04071

Dear Ms. Mapes:

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# 417110 (City ID# W005003).

The City of Killeen (the "city") received a request for information pertaining to a named individual. You claim the submitted information is 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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

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).

test must be demonstrated. *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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks unspecified law enforcement records pertaining to a named individual. Thus, the request implicates that individual's right to privacy. Therefore, to the extent the city maintains any records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual and may not be withheld based on common-law privacy. However, we will consider your argument against the disclosure of this information.

Section 552.108(a)(2) of the Government Code exempts 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). You state report numbers 04-010254 and 04-013377 relate to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to report numbers 04-010254 and 04-013377.

We note basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold report numbers 04-010254 and 04-013377 under section 552.108(a)(2).

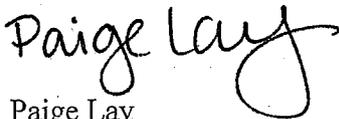
In summary, to the extent the city maintains any records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under

section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the city may withhold report numbers 04-010254 and 04-013377 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 417110

Enc. Submitted documents

cc: Requestor
(w/o enclosures)