ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2011

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2011-05539

Dear Ms. Sims:

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# 415218.

The City of Lubbock (the "city") received two requests from the same requestor for the case numbers for all past arrests of a named individual, including for a specified 1989 arrest, and any and all documents and reports related to a specified incident, including 9-1-1 calls. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted information that does not relate to the named individual, the specified arrest, or the specified incident. This information, which we have marked, is not responsive to the instant request. The city need not release non-responsive information in response to this request, and this ruling will not address the public availability of that information.

[1]Although you also raise section 552.101 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section. We therefore assume you no longer assert section 552.101. *See* Gov't Code §§ 552.301(b), (e), .302.

We also note that you did not submit information related to the specified 1989 arrest for our review. Therefore, to the extent this information existed on the date the city received the requests, we assume the city has released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a); .302; Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, you state some of the requested information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2011-02363 (2011). In that ruling, we determined that the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. There has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city may rely on Open Records Letter No. 2011-02363 as a previous determination and continue to treat the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider your argument for the remaining responsive information that was not the subject of the previous request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[2] 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 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) (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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

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[2]The 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).

The instant request, in part, is for information relating to unspecified arrests involving the named individual. That aspect of this request requires the city to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent the city maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information pertaining to the incident specified in the request. Because this information is not part of a compilation of an individual's criminal history, we will consider your argument for this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

> (c) Except as provided by subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
>
> > (1) if maintained on paper or microfilm, kept separate from adult files and records;
> >
> > (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
> >
> > (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B, D, and E.

Fam. Code § 58.007(c). Upon review, we find report number 11-757 involves juvenile conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this report. Therefore, report number 11-757 is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.[3]

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[3]As our ruling for this information is dispositive, we do not address your remaining argument against its disclosure.

Next, we note that the remaining information includes court-filed documents that are subject to section 552.022(a)(17). Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold these portions of the remaining information under section 552.108 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.108. However, section 552.130 of the Government Code is other law for purposes of section 552.022.[4] Therefore, we will address the applicability of this exception to the court-filed documents. Additionally, we will address your argument under section 552.108 for the remaining information that is not subject to section 552.022.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(2). Therefore, the city must withhold the Texas license plate number we have marked within the court-filed documents under section 552.130 of the Government Code.

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[.]" *Id.* § 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 remaining information relates to a pending criminal investigation. Based on your representation and our review, we conclude that the release of the remaining information 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) (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). Accordingly, section 552.108(a)(1) is generally applicable to the remaining responsive information.

However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 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

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[4]The 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).

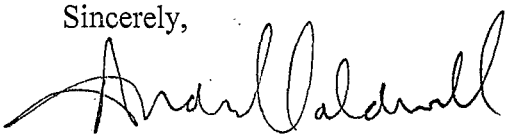
information considered to be basic information). Therefore, with the exception of basic information, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

In summary, with regard to the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city may rely on Open Records Letter No. 2011-02363 as a previous determination and continue to treat the submitted information in accordance with that ruling. To the extent the city maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold report number 11-757 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The court-filed documents, which we have marked under section 552.022(a)(17) of the Government Code, must be released, but the city must withhold the Texas license plate number we marked under section 552.130 of the Government Code.[5] With the exception of basic information, the city may withhold the remaining responsive information under section 552.108(a)(1) 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

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[5]We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 415218

Enc. Submitted documents

c: Requestor
(w/o enclosures)