



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Ms. Linda Hight
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2011-15038

Dear Ms. Hight:

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# 433534.

The City of Cleburne (the "city") received a request for all reports regarding a named person during a specified time. You state some information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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. This section encompasses the common-law right to 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 met. *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. 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). 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 asks for all reports involving the named individual. This request requires the city to compile unspecified police records concerning the named individual, thus implicating such individual's right to privacy. However, we note in this instance the requestor may be acting as the authorized representative of the individual at issue, and thus, have a special right of access to law enforcement records depicting the individual as a suspect, arrestee, or criminal defendant, to the extent they exist. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information regarding the person that is held by a governmental body and protected from public disclosure by laws intended to protect the person's privacy interests); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself or person for whom he is authorized representative). If the requestor is not acting as the authorized representative of the individual, then to the extent law enforcement records depicting her as a suspect, arrestee, or criminal defendant exist, the department must withhold any such information under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of the individual, then to the extent law enforcement records depicting her as a suspect, arrestee, or criminal defendant exist, they may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. You have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the individual's right to privacy and may not be withheld on the basis of common-law privacy. Thus, we will address your arguments against disclosure of this information.

Section 552.108(a)(2) 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 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). You state the investigations in Exhibits 7 through 13 did not result in conviction or deferred adjudication. You seek to withhold the information you have marked concerning persons who were listed as suspects. Based on your representation and our review, we find the information you have marked is subject to section 552.108(a)(2) and may be withheld on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(3)). Therefore, the city must withhold the information you have marked under section 552.130.

In summary, if the requestor is not acting as the authorized representative of the individual at issue, then to the extent the city maintains any law enforcement records depicting the 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. The city may withhold the information you have marked under section 552.108(a)(2) of the Government Code and must withhold the information you marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 433534

Enc. Submitted documents

c: Requestor
(w/o enclosures)