



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2011

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-17099

Dear Mr. Griffith:

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# 436431.

The City of McKinney (the "city"), which you represent, received a request for the police records for a named individual. We note you have redacted social security numbers under section 552.147 of the Government Code.<sup>1</sup> 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 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to

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<sup>1</sup>Section 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. Gov't Code § 552.147(b).

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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The instant request is for all police records involving a named individual. This request for unspecified law enforcement records requires the city to compile the criminal history of the named individual, thus implicating the named individual's right to privacy. We note, however, the requestor is seeking this information in order to assess the named individual as an applicant for a job, and may have authorization from the named individual to access such information. As such, the requestor may have a right of access under section 552.023 of the Government Code to any information the city would be required to withhold from the public to protect this individual's privacy. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). We are unable to determine whether the requestor is acting as the authorized representative of the named individual. Therefore, we rule conditionally. If the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the requestor does not have a right of access under section 552.023, the city must withhold such information under section 552.101 in conjunction with common-law privacy. If the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the requestor has a right of access under section 552.023, the city may not withhold that information from this requestor under section 552.101 in conjunction with common-law privacy. As such, we address your argument under section 552.108 of the Government Code.

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 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 that the submitted information is a criminal case that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the submitted information.

We note, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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 also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the city may withhold the submitted information from disclosure under section 552.108(a)(2).

We note the requestor is with the Dallas Fire-Rescue Department (the “department”), and has requested this information for its use in the review of an applicant for a position with the department. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute’s enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

We note common-law privacy and section 552.108 of the Government Code are not confidentiality statutes that enumerate specific entities to which release of the confidential information is authorized. Thus, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the submitted information that is subject to common-law privacy and section 552.108 to the requestor. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the city does not waive its interests in withholding this information by exercising its discretion under the intergovernmental transfer doctrine.

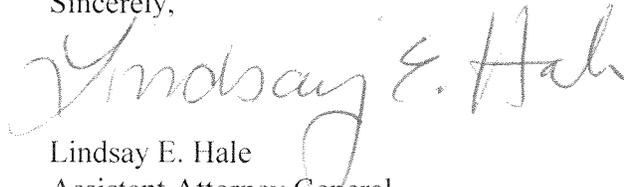
In summary, if the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the requestor does not have a right of access under section 552.023 of the Government Code, the city must withhold such information

under section 552.101 of the Government Code in conjunction with common-law privacy. If the city maintains such records and the requestor has such a right of access under section 552.023 of the Government Code, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, the city may exercise its discretion to release the submitted information to the department based on the doctrine of intergovernmental transfer.

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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 436431

Enc. Submitted documents

c: Requestor  
(w/o enclosures)