



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-05468

Dear Ms. Pemberton:

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# 451207 (Killeen #W007276).

The Killeen Police Department (the "department") received a request for all records related to a named individual. You state the department will release some of the requested information. You claim 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 representative sample of information.¹

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 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. Such information does not implicate this individual's privacy interests and may not be withheld as a compilation of her criminal history. Thus, we will address your arguments against disclosure of this information.

Section 552.108(a)(1) 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 06-001833, 06-005624, 05-011891, 05-015851, and 05-017047 relate to investigations that have not been completed and are pending. You argue release of these reports at this time would hinder the ability to conduct a thorough investigation.

We note report numbers 06-001833, 05-015851, and 05-017047 relate to burglaries of a habitation that occurred in 2005 and 2006. You state the department received the request for information on February 6, 2012. The statute of limitations for a burglary of a habitation offense is five years. *See* Penal Code § 30.02(c)(2) (burglary is felony of second degree if committed in habitation); Crim. Proc. Code art. 12.01(4)(B) (indictment for burglary may be presented within five years from date of commission of the offense, and not afterward). More than five years have elapsed since the events giving rise to the investigations in report numbers 06-001833, 05-015851, and 05-017047. We also note that report number 05-011891 pertains to an investigation of motor vehicle burglary that occurred in 2005, and report number 06-005624 pertains to a Class B misdemeanor charge that occurred in 2006. The longest possible statute of limitations for the offenses described in these two reports is two years. *See* Pen. Code §§ 28.03(b)(2) (criminal mischief is a Class B misdemeanor if the pecuniary loss is \$50 or more, but less than \$500); 30.04(d) (burglary of motor vehicle is Class A misdemeanor); *see also* Crim. Pro. Code art. 12.02(a) (indictment or information on misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years has elapsed since the events giving rise to the investigations in report numbers 05-011891 and 06-005624. You have not informed this office that any criminal charges were filed within the limitations period for report numbers 06-001833, 06-005624, 05-011891, 05-015851, and 05-017047. Thus, section 552.108(a)(1) is not applicable to report numbers 06-001833, 06-005624, 05-011891, 05-015851, and 05-017047 and they may not be withheld on that basis.

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 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). Your state report number 06-005593 relates to a closed investigation that concluded in a result other than conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to report number 06-005593.

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). Section 552.108(c) refers to the basic front-page 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), and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. Therefore, except for basic information, which you state you will release, the department may withhold report number 06-005593 under section 552.108(a)(2) of the Government Code.

As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy which protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Further, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy). Upon review, we find portions of the remaining information contain highly intimate or embarrassing information of no legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 provides that information related to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted

²The 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).

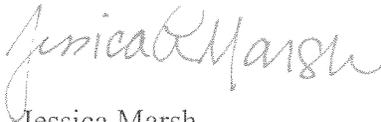
from public release. Gov't Code § 552.130(a)(2). The department must withhold the information we have marked under section 552.130(a)(2) of the Government Code.

In summary, the department must withhold any records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold report number 06-005593 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 451207

Enc. Submitted documents

c: Requestor
(w/o enclosures)