



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2012

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

OR2012-08613

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# 455937 (ID# W007694).

The Killeen Police Department (the "department") received a request for police records of a named individual at two specified addresses during two specified time periods. You state you have released nine call for service reports and basic information for nine police reports, including related arrest reports, complaints, and affidavits. 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.

We first note the submitted information includes a court document. 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 made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court document we have marked under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information confidential for purposes of section 552.022(a)(17). Therefore, the marked court

document may not be withheld under section 552.108 of the Government Code and must be released pursuant to section 552.022(a)(17) of the Government Code.

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 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 test must be satisfied. *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) (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 that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. After reviewing the request and the responsive information, we find the requestor is seeking, in part, specific domestic violence incident reports involving himself and the named individual. Accordingly, this portion of the request does not implicate the named individual’s right to privacy, and the domestic violence incident reports involving the requestor and the named individual may not be withheld under section 552.101 on the basis of the named individual’s privacy interests as a compilation of her criminal history. However, to the extent the department maintains other 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. We note the department has submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This report does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101. Therefore, we will consider your arguments against its disclosure, as well as the domestic violence incident reports concerning the requestor.

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). Generally, 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 police report numbers 10-016962, 11-006028, 12-000679, 12-003989, and 12-004066, and the related call for service reports, each relate to a pending criminal investigation or pending criminal

prosecution. Based upon your representation and our review, we conclude that the release of police report numbers 10-016962, 11-006028, 12-000679, 12-003989, and 12-004066, and the related call for service reports, 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). Thus, section 552.108(a)(1) is applicable to those reports.

Next, you claim police report numbers 10-005474, 11-010100, and 11-015767 are excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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 police report numbers 10-005474, 11-010100, and 11-015767 pertain to investigations that have concluded and that did not result in convictions or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to those reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include witness-identifying information. Thus, with the exception of basic information, which you state you have released, and the court document we marked, the department may withhold police report numbers 10-016962, 11-006028, 12-000679<sup>1</sup>, 12-003989, and 12-004066, and the related call for service reports, under section 552.108(a)(1) of the Government Code and police report numbers 10-005474, 11-010100, and 11-015767 under section 552.108(a)(2) of the Government Code.

In summary, the department must release the marked court document pursuant to section 552.022(a)(17) of the Government Code. Other than the domestic violence records also involving the requestor, 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. With the exception of basic information, which you state you have released, the department may withhold police report numbers 10-016962,

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

11-006028, 12-000679, 12-003989, and 12-004066, and the related call for service reports, under section 552.108(a)(1) of the Government Code and police report numbers 10-005474, 11-010100, and 11-015767 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/eb

Ref: ID# 455937

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note a portion of the information being released contains information to which the requestor has a right of access. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. Further, we note the information being released contains a social security number. 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. *Id.* § 552.147(b).