



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-09468

Dear Mr. Weir:

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# 456941 (COSA File No: W006399).

The City of San Antonio (the "city") received a request for records pertaining to statements, investigations, inspections, permits, photographs, complaints, notes, measurements, any crimes involving a gun or a bullet, videotapes, specified studies, and a named individual from a specified location and period of time, as well as specified agreements.¹ You state you are releasing some of the requested information. 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.

Initially, we note that some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-08410 (2012). In this prior ruling, we ruled that, with the exception of basic

¹You state, and provide documentation showing, the city sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

information that must be released pursuant to section 552.108(c) of the Government Code, the city may withhold report number 12048668 under section 552.108(a)(2) of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the city must rely on Open Records Letter No. 2012-08410 as a previous determination and release or withhold the information subject to that ruling in accordance with it. *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). However, we will address your argument against disclosure for the remaining information, which was not subject to the prior ruling.

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) (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 present request, in part, seeks all information pertaining to a named individual. Thus, this portion of the request requires the city to compile unspecified law enforcement records concerning the named individual, thus implicating the named individual’s right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must to rely on Open Records Letter No. 2012-08410 as a previous determination and release or withhold the information subject to that ruling in accordance with it. To the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such

information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a stylized flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 456941

Enc. Submitted documents

c: Requestor
(w/o enclosures)