



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2012

Mr. R. Kinley Hegglund, Jr.
Senior Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2012-10675

Dear Mr. Hegglund:

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# 458714 (Wichita Falls City ID# 205).

The City of Wichita Falls (the "city") received a request for arrest records regarding the requestor's adult son, including dates and times of any arrest, the reason for the arrest, the charges incurred, and dates of transfer to the sheriff's office or the Wichita County Jail. You claim the submitted information is excepted from disclosure under section 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor and the requestor's daughter. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have submitted information that is not responsive to the present request because it does not consist of arrest records of the requestor's adult son. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information in response to this request.

Next, we note the submitted information contains court documents subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Pursuant to section 552.022(a)(17), a document that has been filed with a court is expressly public and may not be withheld unless it is confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.108 of the Government Code for the submitted court documents, section 552.108 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 section 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), and the city may not withhold the information at issue under section 552.108. However, you also raise section 552.101 of the Government Code for this information. As section 552.101 can make information confidential for purposes of section 552.022, we will address your arguments under this section for the information subject to section 552.022, as well as the remaining information. We will also address your arguments under section 552.108 for the remaining 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 doctrine of common-law privacy, which protects information if (1) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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.

You argue the present request requires the city to compile unspecified law enforcement records concerning the individual at issue. However, we note in his submitted comments, the requestor indicates he is seeking records relating to his adult son and charges of

aggravated robbery in 2008. Additionally, we note you have submitted only the records specified in the requestor's comments. Therefore, we find none of the information at issue may be withheld as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no additional exceptions for the submitted court documents subject to section 552.022(a)(17), which we have marked, the court documents must be released.

You raise section 552.108 for the remaining information. 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to criminal investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code.

In summary, with the exception of basic information and the marked court documents, the city may withhold the submitted information under section 552.108 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,

A handwritten signature in cursive script that reads "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 458714

Enc. Submitted documents

c: Requestor
(w/o enclosures)