



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 23, 2012

Ms. Erin A. Higginbotham  
Denton, Navarro, Rocha & Bernal  
2500 West William Cannon, Suite 609  
Austin, Texas 78745

OR2012-13406

Dear Ms. Higginbotham:

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# 462845.

The City of Carrollton and the Carrollton Police Department (collectively, the "city"), which you represent, received a request for the police blotter and "show-up sheets" for a specified time period and information regarding arrests made during that period to consist of (1) the arrestee's full name, alias, race, sex, age, occupation, address, police department identification number, and physical condition; (2) name of arresting officer; (3) date and time of arrest; (4) booking information; (5) criminal charge; (6) court in which the case was filed; (7) details of arrest; (8) notation of any release or transfer; (10) bonding information; and (11) booking picture or mug shot. 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 information.

Initially, we note the requestor seeks the submitted police blotters, "show-up sheets," and information regarding arrests consisting of the full name, alias, race, sex, age, occupation, address, police department identification number, and physical condition of arrestees; name of arresting officer; date and time of arrest; booking information; criminal charge; court in which the case was filed; details of arrest; notation of any release or transfer; bonding information; and booking picture or mug shot. You have submitted information you have marked as not responsive and we note you have submitted information beyond what was requested. This information is not responsive to the request. This ruling does not address

the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.<sup>1</sup>

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 courthouses 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 a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. You seek to withhold some of the responsive information on the grounds that it requires the city to compile unspecified criminal history records. However, we note the requestor seeks information pertaining to all arrests made during a specified time period, and not information about arrests of certain individuals. Thus, we find this request does not implicate the privacy interest of a named individual, and the city may not withhold any of the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

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<sup>1</sup>Accordingly, we do not address your argument under section 552.101 of the Government Code in conjunction with the informer’s privilege. Additionally, we note the driver’s license numbers you have marked for redaction pursuant to section 552.130(c) of the Government Code and the social security numbers you have marked for redaction under section 552.147 of the Government Code are not responsive to the request and need not be released. *See* Gov’t Code § 552.130(c) (authorizing governmental bodies to redact driver’s license numbers without requesting decision from this office); *see also id.* § 552.147(b) (authorizing governmental bodies to redact social security numbers of living individuals without requesting decision from this office).

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You seek to withhold some of the responsive information under section 58.007(c). However, the information at issue does not identify a suspect or offender who is ten years of age or older and under seventeen years of age. As such, section 58.007 is not applicable and the city may not withhold any of the responsive information under section 552.101 on this basis.

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 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 the responsive mug shots; the responsive bonding, release, and transfer information you have highlighted in blue; and the information you have highlighted in yellow, relate to pending criminal investigations. Based upon this representation and our review, we conclude release of this information 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). Accordingly, section 552.108(a)(1) of the Government Code is generally applicable to this information.

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*, and includes a detailed description

of the offense, as well as bonding information and release and transfer notations. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, the “detailed description of the offense,” bonding, release, and transfer information may not be withheld under section 552.108(a)(1) of the Government Code. See *id.* The city may withhold the remaining responsive information it seeks to withhold under section 552.108(a)(1) of the Government Code.

You seek to withhold some of the responsive basic information pursuant to common-law privacy and constitutional privacy. As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note the public has a legitimate interest in knowing the general details of a crime. See generally *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle*, 531 S.W.2d at 186-187 (public has legitimate interest in details of crime and police efforts to combat crime in community); Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not private matter). Upon review, we find no portion of the responsive basic information constitutes highly intimate or embarrassing information of no legitimate public interest. We therefore conclude the city may not withhold any of the responsive basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the city has failed to demonstrate how any of the responsive basic information falls within the zones of privacy or implicates an individual’s privacy interests

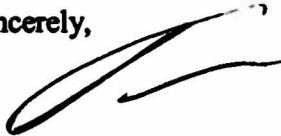
for purposes of constitutional privacy. Thus, no portion of the responsive basic information may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, with the exception of basic information, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 462845

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

