



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-13617

Dear Ms. Kretz:

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# 463333 (Fort Worth PIR Nos. W017619 and W017643).

The City of Fort Worth (the "city") received a request for the 9-1-1 call, dash cam video, radio transmissions, and all records and reports pertaining to a specified incident, and another request from the same requestor for information pertaining to a named individual, who was involved in the same incident as specified in the first request for information. You state the city does not possess any radio transmission recordings or dash cam video recordings requested in the first request.¹ You state the city is releasing some of the requested information. We understand the city will redact the telephone number and address of a 9-1-1 caller you have marked pursuant to Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011).² We also understand the city will withhold the credit card number

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Open Records Letter Nos. 2011-15641 and 2011-15956 are previous determinations issued to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

of a living individual you have marked and the social security numbers of living individuals you have marked under sections 552.136(c) and 552.147(b) of the Government Code, respectively.³ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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. 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.

You assert the present request requires the city to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual’s right to privacy. We note, because the common law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that pertains to only a deceased individual. *Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). In this instance, the named individual is deceased. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental

³Section 552.136(c) authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *Id.* § 552.136(d), (e). Section 552.147(b) 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).

body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked in report 12-38007 relates to a criminal investigation that is open and pending with the city's police department. Based upon your representation and our review, we conclude that release of the information at issue 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 the information at issue.

We note, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense information, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.

Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). However, we note the purpose of section 552.130 is to protect the privacy interests of individuals. As discussed above, the right of privacy lapses at death. As such, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Charles B. Pierce Film Enters.*, 589 S.W.2d at 491; *see also* ORD 272 at 1. We note you have marked the driver's license number of the deceased individual and information pertaining to the vehicle of the deceased individual. The city may not withhold the driver's license number of the deceased individual, which we have marked for release, on the basis of section 552.130. The city must withhold the deceased's vehicle information under section 552.130 if a living individual owns an interest in the vehicle. However, if a living individual does not own an interest in the deceased individual's vehicle, then the city may not withhold this information, which we have marked for release, under section 552.130. The city must withhold the remaining motor vehicle record information you have marked that pertains to living individuals, and the additional information we have marked for withholding, under section 552.130 of the Government Code.

In summary, with the exception of the basic information, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. If a living individual owns an interest in the deceased individual's vehicle, the city must withhold the information pertaining to the deceased individual's vehicle we have marked under section 552.130 of the Government Code. With the exception of the information we have for release, the city must withhold the remaining information you have marked that pertains

to living individuals, and the additional information we have marked for withholding, under section 552.130 of the Government Code. The city must release the remaining information.

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 "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 463333

Enc. Submitted documents

c: Requestor
(w/o enclosures)