



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2012

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-16934

Dear Ms. Armstrong:

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# 468597 (ORR# 2012-09433).

The City of Dallas (the "city") received a request for any documents pertaining to a specified public integrity investigation. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. This section provides, in relevant part, as follows:

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<sup>1</sup>Although you do not raise sections 552.130 and 552.147 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

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

Gov't Code § 552.022(a)(3), (17). We have marked information relating to the receipt of public funds that is subject to subsection 552.022(a)(3) of the Government Code, and court-filed documents that are subject to subsection 552.022(a)(17) of the Government Code. You seek to withhold this information under section 552.108 of the Government Code. However, this section is a discretionary exception and does not make information confidential under the Act. *See* 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). Thus, the city may not withhold the information we have marked pursuant to section 552.022 of the Government Code under section 552.108 of the Government Code. As no further exceptions to disclosure are raised for this information, the city must release it. However, we will address your arguments against disclosure of the remaining information, which is not subject to section 552.022.

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(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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you inform us the remaining information pertains to a pending criminal investigation. We note the internal affairs investigation includes citations that were provided to the individuals who were cited. Because a copy of the citations have been provided to the individuals who were cited, we find their release will not interfere with the detection, investigation, or prosecution

of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the citations, which we have marked, under section 552.108 of the Government Code. However, based on your representation and our review, we conclude the release of the remaining information you have marked under section 552.108 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) of the Government Code is applicable to this information.

We note, however, and you acknowledge, 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 types of information considered to be basic information). Thus, with the exception of the citations we have marked and basic information, the city may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.<sup>3</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. 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. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup>

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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

<sup>4</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held that section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. 2010). Upon review, we conclude the city must withhold the birth date you have marked and we have marked in the remaining information under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state, or another state or country, is excepted from public release. Gov’t Code § 552.130(a)(1)-(2). Upon review, we conclude the city must withhold the driver’s license number you have marked and the driver’s license and motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.<sup>5</sup>

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand employee identification numbers are used in conjunction with one additional digit to access the employees’ city credit union bank accounts. Thus, we agree the city must withhold the employee identification number you have marked in the remaining information under section 552.136 of the Government Code.

In summary, the city must release the information we have marked under section 552.022 of the Government Code. With the exception of the citations we have marked and basic information, the city may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the birth date you have marked and we have marked under section 552.102(a) of the Government Code. The city must withhold the driver’s license number you have marked and the driver’s license and motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the employee identification number you have marked under section 552.136 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.

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<sup>5</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of seeking a decision from this office.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 468597

Enc. Submitted documents

c: Requestor  
(w/o enclosures)