



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-20376

Dear Ms. Pemberton:

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# 474512 (Killeen ID# W009122).

The City of Killeen (the "city") received a request for all calls and reports involving the requestor and a named individual, and a specified address during a specified time period. You state you have released some information to the requestor. You claim some of 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 some of the submitted information, which we have marked, is not responsive to the instant request because it falls outside the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release non-responsive information in response to the request.¹

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

¹As our determination is dispositive, we need not address your arguments against disclosure of this information.

Code § 552.101. Section 552.101 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The request, in part, seeks all records pertaining to the named individual during a specified time period. Thus, we find this part of the request requires the city to compile the named individual's criminal history. 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 such information under section 552.101 in conjunction with common-law privacy as a compilation of the named individual's criminal history. We note the requestor also seeks records involving herself. As such, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to herself that would otherwise be withheld to protect her privacy. *See Gov't Code § 552.023(a)* (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”). Therefore, information relating to the requestor may not be withheld from the requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Additionally, we note you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. We find this information does not consist of a compilation of the individual's criminal history, and may not be withheld under section 552.101 on that basis. Accordingly, we will consider your arguments for this information.

You claim some of the remaining information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy. We note 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. 540 S.W.2d at 683. This office has determined some kinds of medical information or information indicating disabilities or

specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find some of the remaining information is highly intimate or embarrassing and not of legitimate public concern. We note, however, the requestor is one of the individuals whose privacy interests are at issue. Accordingly, as noted above, the requestor has a special right of access under section 552.023 of the Government Code to information concerning herself that would ordinarily be protected by common-law privacy. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, we find the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest or it pertains to the requestor. Accordingly, none of the remaining information may be withheld on this basis.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state the information you have marked reveals the identity of individuals who reported violations of law to the city's police department, which is responsible for enforcing criminal law. We have no indication the subjects of the complaints are aware of the identity of the informer. Upon review, therefore, we conclude the city has demonstrated the applicability of the common-law informer's privilege to portions of the information, which we have marked. Therefore, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate how any of the remaining information consists of the identifying information of an individual who made the initial report of a criminal violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold any portion of the remaining information under section 552.101 on that basis.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining responsive 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 474512

Enc. Submitted documents

c: Requestor
(w/o enclosures)