



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2012

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

OR2012-20509

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# 478951 (Killeen ID# W009431).

The Killeen Police Department (the "department") received a request for all police records related to a named individual. You claim the requested 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.

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) 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. 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. United States 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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks any information concerning the named individual for a specified time period. We find this request for unspecified law enforcement records implicates this individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. Accordingly, we will address your argument for this 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).

You state report number 12-003601 relates to a case that concluded in a result other than conviction or deferred adjudication. Thus, this information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 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* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other items of information, a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold report number 12-003601 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the department may withhold report number 12-003601 under section 552.108(a)(2) 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 478951

Enc. Submitted documents

cc: Requestor
(w/o enclosures)