



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2013

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor, Olson, Adkins, Sralla, Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-00695

Dear Ms. Russell:

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# 476251.

The City of Southlake (the "city"), which you represent, received a request for a specified incident report, including any notes, reports, warrants, affidavits, and e-mails, and any communications with the Tarrant County District Attorney's Office. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim that 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 552.108(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 this exception is applicable to the information at issue. *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 incident discussed in Exhibits B-1,

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See Gov't Code § 552.147(b).*

B-2, and B-3 is currently being investigated or prosecuted by the Tarrant County Criminal District Attorney's Office. Based on your representations and our review, we find that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to the information at issue. 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).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page 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 basic information, which must be released, the city may withhold the information in Exhibits B-1, B-2, and B-3 under section 552.108(a)(1).²

Exhibit B-4 contains motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, 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 find the city must withhold the driver's license number you have marked, as well as the additional information we have marked, in Exhibit B-4 under section 552.130 of the Government Code.

A portion of the remaining information in Exhibit B-4 is subject to section 552.101 of the Government Code. 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 of the Government Code 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. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body. See generally Open Records Decision Nos. 600 at 9-10 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Further, 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. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked in Exhibit B-4 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the information in Exhibits B-1, B-2, and B-3 under section 552.108(a)(1) of the Government Code. The city must withhold the driver's license number you have marked, and the additional driver's license information we have marked, in Exhibit B-4 under section 552.130 of the Government Code. The city must withhold the information we have marked in Exhibit B-4 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 476251

Enc. Submitted documents

c: Requestor
(w/o enclosures)