



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2013

Mr. James McKechnie
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2013-03720

Dear Mr. McKechnie:

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# 480578 (City ID No. 612).

The City of Wichita Falls (the "city") received a request for all information related to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.137 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 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. The present request seeks all records pertaining to a named individual. Thus, this 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. However, 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 remaining arguments for this information.

We note the submitted information contains CR-3 accident report forms subject to section 550.065 of the Transportation Code. Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 550.065 of the Transportation Code. Section 550.065 provides that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the city must withhold the submitted CR-3 accident report forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 11-080456 and 11-110660 relate to pending criminal investigations. Thus, we find the release of report numbers 11-080456 and 11-110660 would interfere with the detection, investigation, and prosecution of a 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). Therefore, we conclude section 552.108(a)(1) is generally applicable to report numbers 11-080456 and 11-110660.

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). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report numbers 02-050926, 04-111133, and 05-062589 relate to cases that did not result in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is generally applicable to this information.

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*. *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 basic information, which must be released, the city may withhold report numbers 11-080456 and 11-110660 under section 552.108(a)(1) of the Government Code and report numbers 02-050926, 04-111133, and 05-062589 under section 552.108(a)(2) of the Government Code.¹

Common-law privacy also protects information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. *See* 540 S.W.2d 668, 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find portions of the remaining information are highly embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code, which excepts from disclosure “information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state or another state or country[.]”² *See* Gov’t Code § 552.130(a)(2). Therefore, we find the city must withhold the information we have marked under section 552.130 of the Government Code.

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

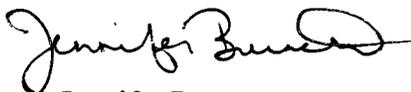
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. The city must withhold the submitted CR-3 accident report forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of the basic information, which must be released, the city may withhold report numbers 11-080456 and 11-110660 under section 552.108(a)(1) of the Government Code and report numbers 02-050926, 04-111133, and 05-062589 under section 552.108(a)(2) 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 also withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.³

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

³We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

Ref: ID# 480578

Enc. Submitted documents

c: Requestor
(w/o enclosures)