



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2013

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-06644

Dear Ms. Byles:

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# 484851 (City of Fort Worth PIR No. W023493).

The City of Fort Worth (the "city") received a request for police reports involving the requestor for a specified time period, police reports involving two named individuals for a different time period, and a police report pertaining to a specified incident involving one of the named individuals. You state you are releasing some information. We understand you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 of the Government Code.² 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

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).

²Although you raise section 552.151 of the Government Code, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. *See* Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20). Further, we understand you to raise section 552.130 of the Government Code based on your markings in the submitted information.

Code § 552.101. This section encompasses the common-law right to 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 met. *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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the city to compile unspecified law enforcement records concerning the requestor and the other named individuals and implicates these individuals' right to privacy. However, we note the requestor has a special right of access under section 552.023 of the Government Code to his own information that would otherwise be withheld to protect his privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, information relating to the requestor may not be withheld from him as a compilation of his criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, to the extent the city maintains law enforcement records depicting the other named individuals who are not the requestor as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to the other named individuals solely as victims, witnesses, or involved persons is not private as criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the other named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the other named individuals. Thus, we will address your arguments against disclosure of this information.

Section 552.108(a)(1) 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 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). You have provided affidavits from the Fort Worth Police Department (the "department") stating report numbers 12-63521, 12-64148, and 13-6523 pertain to pending investigations by the department and their release would interfere with law enforcement activities. Based upon

these representations, we agree section 552.108(a)(1) of the Government Code 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 from disclosure 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 offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the city may withhold report numbers 12-63521, 12-64148, and 13-6523, which you have marked, under section 552.108(a)(1).

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. See *id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. See ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information you have marked constitutes CHRI for the purposes of chapter 411. Thus, the city must withhold the information you have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

As previously noted, section 552.101 of the Government Code encompasses common-law privacy. Common-law privacy is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. 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. *Id.* This office has 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 intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1). Upon review, we find portions of the submitted information consist of motor vehicle record information. However, we note some of the information you seek to withhold under section 552.130 does not constitute motor vehicle record information, and it may not be withheld under section 552.130. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You inform us the information you have marked under section 552.152 relates to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the names and identification numbers you have marked would subject the officers to a substantial threat of physical harm. Therefore, the city must withhold the information you marked, and the additional information we have marked, under section 552.152.

In summary, to the extent the city maintains law enforcement records depicting the named individuals other than the requestor as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation. With the exception of the basic information, the city may withhold report numbers 12-63521, 12-64148, and 13-6523, which you have marked, under section 552.108(a)(1) of the Government Code. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

With the exception of the information we have marked for release, the city must withhold the information you have marked, and the information we have marked, under section 552.130 of the Government Code. The city must withhold the information you marked, and the additional information we have marked, under section 552.152 of the Government Code. As you raise no further exceptions to disclosure, 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 484851

Enc. Submitted documents

c: Requestor
(w/o enclosures)