



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2013

Ms. Danielle Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2013-08212

Dear Ms. Folsom:

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# 487569 (Houston GC No. 20328).

The Houston Police Department (the "department") received a request for information related to a specified address, a named individual, and a named complainant during a specified time period. You claim 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.

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, in part, seeks all information pertaining to a named individual. Thus, this part of the request requires the city to compile the named individual's criminal history. 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 as a compilation of the named individual's criminal history. However, the request also seeks information related to a named complainant. In addition, 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 implicate any individual's right to privacy for purposes of *Reporters Committee*. Accordingly, we will address your arguments for this information.

You assert the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) provides in part the following:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) 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)(1)-(2). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We understand you to assert the information in Exhibits 2, 2B, and the related audio recording pertain to pending criminal cases. Based on this representation and our review of the information, we find release of the information at issue would interfere with the detection, investigation, or 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 describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536

S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable to the information in Exhibits 2, 2B, and the related audio recording. You state the information in Exhibits 3, 3A, and the related audio recording pertain to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the information in Exhibits 3, 3A, and the related audio recording.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. 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 department may withhold the submitted information in Exhibits 2, 2B, and the related audio recording under section 552.108(a)(1) of the Government Code and the information in Exhibits 3, 3A, and the related audio recording under section 552.108(a)(2) of the Government Code.<sup>1</sup>

We understand you to assert some of the basic information must be withheld on the basis of common-law privacy. As noted above, common-law privacy protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The types of information considered highly 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.* at 683. Upon review, we find some of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold the information we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold any portion of the remaining basic information under section 552.101 in conjunction with common-law privacy.

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 as a compilation of the named individual's criminal history. With the exception of the basic information, the department may withhold the submitted information in Exhibits 2, 2B, and the related audio recording under section 552.108(a)(1) of the Government Code and the information in Exhibits 3, 3A, and the related audio recording under section 552.108(a)(2) of the Government Code. In releasing basic information, the

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its release.

department must withhold the information we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a horizontal line extending to the right from the end of the signature.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 487569

Enc. Submitted documents

c: Requestor  
(w/o enclosures)