



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2013

Mr. Habib H. Erkan, Jr.
Counsel for City of Live Oak
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2013-08562

Dear Mr. Erkan:

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# 488387.

The City of Live Oak (the "city"), which you represent, received a request for any and all records and documents related to any call for police assistance and/or police response involving a named individual from February 11, 2013 to the date of the request. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city did not comply with the procedural requirements of the Act. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). The requestor asserts that the city failed to provide the

requestor with “any notice as to which exemption is being claimed” and did not provide “a written statement that the [city] wishes to withhold the requested information.” Upon review, however, we find the city’s initial request for a decision to this office was timely submitted and shows it was copied to the requestor. We also note the city’s follow-up brief to this office, in which it provides arguments in support of its claimed exception to disclosure, was timely submitted and contains a notation the requestor was copied on the brief. Thus, we conclude the city complied with the requirements of sections 552.301(d) and 552.301(e-1) 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.”¹ Gov’t Code § 552.101. Section 552.101 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. 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 courthouse 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). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this instance, the request seeks unspecified records pertaining to the named individual. We find this request requires the city to compile the named individual’s criminal history, and thus, implicates the named individual’s right to privacy. Accordingly, 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.²

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.

¹The 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).

²As our ruling is dispositive, we need not address your argument against disclosure.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 488387

Enc. Submitted documents

c: Requestor
(w/o enclosures)