



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2013

Ms. Susan Camp-Lee
Attorney for the City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2013-09784

Dear Ms. Camp-Lee:

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# 489828.

The Round Rock Police Department (the "department"), which you represent, received a request for any information concerning two named individuals. We understand you will redact a driver's license number you have marked in accordance with section 552.130(c) of the Government Code.¹ We understand you have redacted social security numbers pursuant to section 552.147(b) of the Government Code.² We further understand you have redacted an insurance policy number pursuant to section 552.136(c) of the Government Code.³ You claim a portion of the submitted information is not subject to the Act. You claim the

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state, or another state or country. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

²Section 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).

³Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you inform us some of the submitted information consists of a grand jury subpoena and records obtained pursuant to the grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent the information at issue is held by the department as an agent of the grand jury it consists of records of the judiciary not subject to disclosure under the Act, and we do not address its public availability. To the extent the submitted information is not held by the department as an agent of the grand jury, we will address your arguments against disclosure of 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. 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082 (2)(B)* (criminal history record information does not include driving record information).

The present request requires the department to compile unspecified law enforcement records concerning the requestor's client and another named individual and implicates these individuals' rights to privacy. However, we note the requestor has a special right of access under section 552.023 of the Government Code to her client's information that would otherwise be withheld to protect her 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's client may not be withheld from her as a compilation of her client's criminal history under section 552.101 in conjunction with common-law privacy.

Furthermore, upon review of the request and the submitted information, we find the requestor is, in part, seeking a specific domestic violence report involving her client and the other named individual. Thus, this portion of the request does not implicate the other named individual's right to privacy, and the domestic violence report involving the requestor's client and the other named individual may not be withheld under section 552.101 on the basis of the other named individual's privacy interests as a compilation of his criminal history. However, to the extent the department maintains unspecified law enforcement records depicting the other named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In addition to the domestic violence report, we note you have submitted unspecified records in which the other named individual is not listed as a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the named individual's criminal history and may not be withheld under section 552.101 on that basis. We will, however, consider your remaining arguments against disclosure of this information and the domestic violence report.

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 state the information submitted as Exhibit D relates to a pending criminal investigation. Based upon this representation, 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 department may withhold the information at issue in Exhibit D under section 552.108(a)(1).

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). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find portions of the remaining information are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information you have highlighted in green, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. See Gov't Code § 552.130(a)(1)-(2). Upon review, we conclude, the department must withhold the information you have marked and highlighted, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the information that is held by the department as an agent of the grand jury consists of records of the judiciary and is not subject to disclosure under the Act. To the extent the department maintains unspecified law enforcement records depicting the named individual that is not the requestor's client 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 criminal history compilation. With the exception of the basic information, the department may withhold Exhibit D under section 552.108(a)(1) of the Government Code. The department must withhold the information you have highlighted, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked and highlighted, and the information we have marked, under section 552.130 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 489828

Enc. Submitted documents

c: Requestor
(w/o enclosures)