



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2013

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2013-10841

Dear Mr. McWilliams:

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# 493082.

The Amarillo Police Department (the "department") received a request for any information pertaining to a named individual, including police reports from a specified date and a specified time period. You claim the responsive 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. This section 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. *See 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. *See 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates this individual's right to privacy. 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 any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. Thus, the information at issue may not be withheld under section 552.101 in conjunction with common-law privacy.

Common-law privacy also protects the types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, which includes 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. *Indus. Found.*, 540 S.W.2d at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the information at issue reflects the requestor knows the identity of the individual involved, as well as the nature of the incidents at issue this information. Therefore, withholding only this individual's identity or certain details of these incidents from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, the department must withhold Exhibits B and C in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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 any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold Exhibits B and C in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

¹As our ruling for this information is dispositive, we need not address your remaining argument under section 552.108 of the Government Code.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 493082

Enc. Submitted documents

c: Requestor
(w/o enclosures)