



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2013

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
701 Main Street
Kerrville, Texas 78028

OR2013-14811

Dear Ms. Stebbins:

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# 497306.

The City of Kerrville (the "city") received a request for information pertaining to a named individual. 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, 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 individual named in the request and implicates this 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 as a compilation of his criminal history.

However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual, and thus, may not be withheld under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. Thus, we will address your arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 2004030596 and 2000080994 relate to closed criminal investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the information at issue.

Section 552.108 of the Government Code does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold report numbers 2004030596 and 2000080994 under section 552.108(a)(2) of the Government Code.¹

Section 552.101 of the Government Code also encompasses chapter 550 of the Transportation Code. Section 550.065(c) states except as provided by subsection (c) or

¹As our ruling is dispositive, we need not address your remaining argument under section 552.108(b)(2) of the Government Code.

subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* You state the requestor has not provided two of the three pieces of required information for release of the submitted CR-3 accident report. Thus, we find the city must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license or permit or motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130(a)(1), (2). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, 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 as a compilation of his criminal history. With the exception of basic information, the city may withhold report numbers 2004030596 and 2000080994 under section 552.108(a)(2) of the Government Code. The city must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

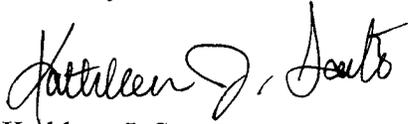
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen J. Santos".

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/akg

Ref: ID# 497306

Enc. Submitted documents

c: Requestor
(w/o enclosures)