



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 25, 2013

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2013-16654

Dear Ms. Pemberton:

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# 500731 (Killeen PD ID# W011137).

The Killeen Police Department (the "department") received a request for records of domestic abuse or assault involving a named person over the eighteen month period preceding the request. You inform us you have released some of the requested information to the requestor. 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.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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

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<sup>1</sup>The 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).

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) (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.

After reviewing the request and the responsive information, we find the requestor is seeking, in part, specific domestic violence incident reports involving himself and the named individual. Accordingly, this portion of the request does not implicate the named individual's right to privacy, and the domestic violence incident reports involving the requestor and the named individual may not be withheld under section 552.101 on the basis of the named individual's privacy interests in a compilation of her criminal history. However, to the extent the department maintains other law enforcement records, other than the specified domestic violence incident reports, 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.

Next, we note police report numbers 12-004951, 12-011565, and 12-012443 were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-16832 (2012). In Open Records Letter No. 2012-16832, we determined, with the exception of basic information, the city may withhold report numbers 12-011565 and 12-012443 under section 552.108(a)(1) of the Government Code and report number 12-004951 under section 552.108(a)(2) of the Government Code. With respect to report number 12-004951, we have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2012-16832 as a previous determination and withhold or release report number 12-004951 in accordance with that ruling.<sup>2</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you inform us report numbers 12-011565 and 12-012443 pertain to investigations that have now concluded. Thus, with respect to report numbers 12-011565 and 12-012443, we find the circumstances have changed and the department may not rely on Open Records Letter No. 2012-16832 as a

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<sup>2</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

previous determination for these reports. *See id.* Accordingly, we will address your argument against the disclosure of report numbers 12-011565 and 12-012443.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 12-011565 and 12-012443 pertain to investigations that concluded in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, which you state you have released, you may withhold report numbers 12-011565 and 12-012443 from disclosure based on section 552.108(a)(2) of the Government Code.

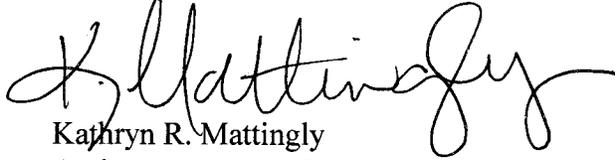
In summary, to the extent the department maintains law enforcement records, other than the specified reports, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department may rely on Open Records Letter No. 2012-16832 as a previous determination and withhold or release report number 12-004951 in accordance with that ruling. With the exception of the basic information, the department may withhold report numbers 12-011565 and 12-012443 from disclosure based on section 552.108(a)(2) 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](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,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/tch

Ref: ID# 500731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)