



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2013

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

OR2013-17785

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# 502250 (Killeen ID# W011222).

The City of Killeen (the "city") received a request for all police reports involving the requestor's daughter from March 2012 through the date of the request. You state you have released some information to the requestor. You claim the remaining requested 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. Common-law privacy 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has found 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks the city for all police records associated with her daughter, thus implicating her daughter's right to privacy. We note, however, the requestor may be her daughter's authorized representative. In that case, the requestor would have a right of access under section 552.023 of the Government Code to any information the city would be required to withhold from the general public to protect the individual's privacy. Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).<sup>1</sup> As we are unable to determine whether the requestor is her daughter's authorized representative, we will rule conditionally. Thus, if the requestor is not her daughter's authorized representative, then to the extent the city maintains any information that depicts the requestor's daughter as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is her daughter's authorized representative, then she has a special right of access to the compilation of her daughter's criminal history, to the extent it exists, and it may not be withheld on privacy grounds under section 552.101. In that instance, we will address the applicability of section 552.108 of the Government Code. Furthermore, we note you have submitted records in which the requestor's daughter is not listed as a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the requestor's daughter's criminal history and may not be withheld under section 552.101 on this basis. Therefore, we will consider the applicability section 552.108 of the Government Code to this information.

Section 552.108(a)(1) of the Government Code exempts 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

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<sup>1</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

You state police report number 13-001907 relates to a pending prosecution. You state the county attorney's office has objected to release of this report because it may jeopardize this pending prosecution. You also state police report number 13-001398 relates to an ongoing investigation being conducted by the city's police department (the "department"), and that release of this report would hinder that ongoing investigation. Based these representations and our review, we find you have demonstrated release of police report numbers 13-001907 and 13-001398 would interfere with the detection, investigation, or prosecution of crime. *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).

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 claiming section 552.108(a)(2) must demonstrate that 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 police report numbers 12-005942 and 12-006937 relate to concluded investigations conducted by the department. You state the department does not anticipate filing any charges in these cases in the future and the cases did not result in conviction or deferred adjudication. Thus, we find the city has demonstrated police report numbers 12-005942 and 12-006937 deal with the detection, investigation, or prosecution of crime in relation to closed investigations that did not result in conviction or deferred adjudication.

We note, and 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 front-page information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the city may withhold police report numbers 13-001907 and 13-001398 under section 552.108(a)(1) of the Government Code and police report numbers 12-005942 and 12-006937 under section 552.108(a)(2) of the Government Code.

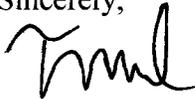
In summary, if the requestor is not her daughter's authorized representative, then any information maintained by the city that depicts the requestor's daughter as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold police report numbers 13-001907 and 13-001398 under

section 552.108(a)(1) of the Government Code and police report numbers 12-005942 and 12-006937 under section 552.108(a)(2) of the Government Code. The remaining information must be released.<sup>2</sup>

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tch

Ref: ID# 502250

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor may have a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. We further note the basic information includes the arrestee's social security number. Section 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 a decision from this office under the Act. Gov't Code § 552.147. However, to the extent the requestor is her daughter's authorized representative, the requestor has a right of access to her daughter's social security number and it must be released to her. *See generally id.* § 552.023(b).