



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2013

Ms. Michele Tapia
Assistant City Attorney
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2013-18401

Dear Ms. Tapia:

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# 503915 (ORR# 1242).

The City of Carrollton (the "city") received a request for all records pertaining to four named individuals.¹ You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to any of the four named individuals. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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 satisfied. *Id.* at 681-82. 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. United States 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to four named individuals. This request requires the city to compile the named individuals' criminal histories and implicates the right to privacy of each of the named individuals. Therefore, to the extent the city maintains law enforcement records listing any of the named individuals 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.

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 that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of any of the named individuals' criminal history, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address your remaining arguments against disclosure of this information.

You argue the responsive information at issue is protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

The information submitted as Exhibit K pertains to a report of attempted sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was

required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude the city must withhold Exhibit K in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, to the extent the city maintains law enforcement records listing any of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information as a compilation of the individual's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Exhibit K in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the responsive information.

Ms. Michele Tapia - Page 4

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Enc. Submitted documents

c: Requestor
(w/o enclosures)