



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2014

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

OR2014-00395

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# 510142.

The City of Amarillo (the "city") received a request for all criminal records on a named individual. You claim the requested 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 must address the city's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You inform us the city received the instant request for information on October 3, 2013. Thus, the city's ten-business-day deadline to request a

ruling was October 17, 2013. However, the envelope containing your request for a ruling from this office is postmarked October 21, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, we find the city failed to comply with the procedural requirements mandated by section 552.301(b). Additionally, we note the requestor seeks all criminal records on the named individual. You have submitted only one document consisting of a list pertaining to the named individual, but not a copy or representative sample of any additional records. Further, we find the submitted list is not representative of any additional information to which the list may pertain. Accordingly, to the extent the city maintains additional responsive information, we find the city failed to comply with the procedural requirements mandated by section 552.301(e) with respect to any such information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert the requested information is excepted from disclosure under section 552.101 of the Government Code, which can provide a compelling reason to withhold information. However, to the extent the city maintains additional responsive information, because the city has not submitted a copy or representative sample of such information to this office for our review, we have no basis for finding such information confidential by law. Thus, we have no choice but to order any additional responsive information released pursuant to section 552.302. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. However, we will consider the applicability of section 552.101 of the Government Code to the responsive information you have submitted.

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 demonstrated. *See 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

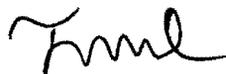
highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local 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 unspecified law enforcement records for a named individual. This request requires the city to compile the named individual's criminal history and implicates the named individual's right to privacy. Upon review, we find the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the submitted information 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 510142

Enc. Submitted documents

c: Requestor
(w/o enclosures)