



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2014

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

OR2014-01650

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# 514422 (City ID# W012098).

The City of Killeen (the "city") received a request for information pertaining to a named individual and calls for service at a specified address since August 1, 1998. The city states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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 requestor asks for all information held

by the city concerning a named individual. A request to compile an individual's criminal history implicates this person's privacy. Therefore, 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. However, you have submitted documents pertaining to the specified address that do not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate this individual's privacy. Therefore, this information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). Based on your representations, we find police report number 10-003751 involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.02(2) (for purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age when the conduct occurred). The exceptions in section 58.007 do not appear to apply. Therefore, the city must withhold police report number 10-003751 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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 police report 00-999 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

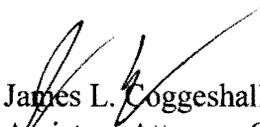
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Pub'l Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold police report 00-999 under section 552.108(a)(2) of the Government Code.

To conclude, the city must withhold any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold police report number 10-003751 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic front-page offense and arrest information, the city may withhold police report 00-999 under 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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 514422

Enc. Submitted documents

c: Requestor
(w/o enclosures)