



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 7, 2014

Ms. Rebecca Hendricks Brewer  
Counsel for the City of Frisco  
Abernathy, Roeder, Boyd, & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2014-02428

Dear Ms. Brewer:

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# 513575.

The Frisco Police Department (the "department"), which you represent, received a request for all records pertaining to two named individuals and a specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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." 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 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.

The present request requires the department to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate these individuals' rights to privacy. Accordingly, we will address your remaining arguments for this information.

You inform us post-run/call report number 12066754 and incident report number 12037772 were the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2012-18922 (2012). In Open Records Letter No. 2012-18922, we determined, in part, (1) if the department is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code, then, to the extent the telephone number and address of the 9-1-1 caller we marked was supplied by a 9-1-1 service supplier, the department must withhold that information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code; (2) the department must withhold the driver's license number we marked under section 552.130 of the Government Code; and (3) the remaining information in post-run/call report number 12066754 and incident report number 12037772 must be released to the requestors. You seek to withhold, under section 552.108 of the Government Code, the information we previously determined had to be released. Section 552.007 of the Government Code provides that if a governmental body releases information to any member of the public, it may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under Act, but may not disclose information made confidential by law). Section 552.108 of the Government Code is a discretionary exception to disclosure intended to protect a governmental body's interests and may be waived. *See* Open Records Decisions Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, it neither prohibits public release of information nor makes information confidential under law. Therefore, the department may not withhold any of the information at issue under section 552.108 of the Government Code. We find there has been no change in the law, facts, or circumstances on which the previous ruling was based. Thus, with regard to the information at issue, we conclude the department must continue to rely on Open Records Letter No. 2012-18922 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on

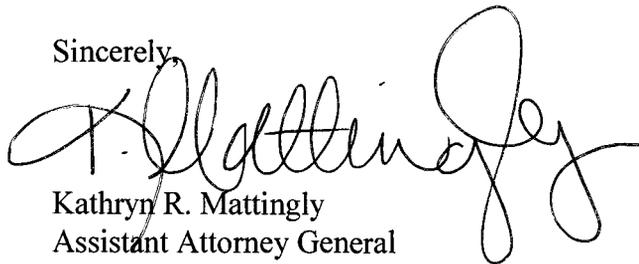
which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With regard to post-run/call report number 12066754 and incident report number 12037772, the department must continue to rely on Open Records Letter No. 2012-18922 as a previous determination and withhold or release the information in accordance with that ruling.<sup>1</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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 513575

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As we are able to make these determinations, we need not consider your remaining arguments.