



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2014

Ms. Sarah R. Martin  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2014-06919

Dear Ms. Martin:

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# 520820 (P.D. Ref. No. 14268).

The Arlington Police Department (the "department") received a request for police reports pertaining to the requestor, two named individuals, a specified address, and specified incidents involving the requestor. You claim the submitted 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.

Initially, we note some of the information submitted in Exhibit B, which we have marked, is not responsive to the instant request because it was created after the department received the request. This ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release this information in response to this request.

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 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

In this case, the request for information, in part, seeks unspecified law enforcement records pertaining to the named individuals. This part of the request requires the department to compile the named individuals' criminal history and thus implicates the named individuals' rights to privacy. However, we find the part of the request that seeks information pertaining to a specified address and the specified incidents does not implicate the named individuals' privacy interests. You submit reports 13-47998, 13-47778, 13-47396, and 13-56780, which pertain to the specified address and the specified incidents. As such, these reports may not be withheld as part of a criminal history compilation. However, to the extent the department maintains other law enforcement records listing 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 will address your arguments against disclosure of reports 13-47998, 13-47778, 13-47396, and 13-56780.

You seek to withhold report 13-47778 under section 552.101 of the Government Code in conjunction with common-law privacy. As discussed above, information protected by common-law privacy is subject to the two-part test discussed in *Industrial Foundation*. *See Indus. Found.*, 540 S.W.2d at 685. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us reports 13-47998, 13-47396, and 13-56780 relate to pending criminal investigations and prosecutions. You indicate the department objects to the release of this information because its release would interfere with the pending investigations and prosecutions. Based on these representations, we conclude section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold reports 13-47998, 13-47396, and 13-56780 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains law enforcement records, other than reports 13-47998, 13-47778, 13-47396, and 13-56780, listing the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked in report 13-47778 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold reports 13-47998, 13-47396, and 13-56780 under section 552.108(a)(1) of the Government Code. The department must release the remaining information.

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,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 520820

Enc. Submitted documents

c: Requestor  
(w/o enclosures)