



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2014

Ms. Bonnie Lee Goldstein
Counsel for the City of Princeton
Bonnie Lee Goldstein, P.C.
P.O. Box 140940
Dallas, Texas 75214-0940

OR2014-07813

Dear Ms. Goldstein:

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# 520629.

The City of Princeton (the "city"), which you represent, received two requests for incident reports and documentation pertaining to two specified individuals involved in domestic violence, any incident report pertaining to the arrest of a named individual at a specified address, including audio and video recordings of police officers who participated in the arrest of the named individual, and a list of all federal funds received by the city, and the purposes for which the funds were used, from January 2009 until the date of the request. You state the city does not have information responsive to the request for audio and video recordings.¹ You state you have released some information to both of the requestors. You state you will redact social security numbers under section 552.147(b).² You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and reviewed the submitted information. We have also received comments from the second

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

requestor, who has written on behalf of both requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the second requestor asserts the city previously released the full police report being requested to a citizen request for the same information in August 2010. You inform our office the city never intentionally released this information in response to a request under the Act. You state a citizen had taken unauthorized photographs of all or part of the file, and that the disclosure was inadvertent. We note the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). We note a governmental body is not precluded from invoking an exception to further public disclosure of information that has been released on a limited basis through no official action and against the wishes and policy of the governmental body. *See* Open Records Decision No. 376 at 2 (1983); *see also* Open Records Decision No. 387 at 3 (1983) (information that is not voluntarily released by a governmental body, but nevertheless comes into another party's possession, is not henceforth automatically available to everyone). In this instance, we find there was no voluntary release of information. Accordingly, we will consider your arguments against disclosure of the submitted information.

Next, we address the second requestor's comments that the city has ignored the portion of her request pertaining to the receipt and use of federal funds by the city. The city provides documentation showing that information responsive to this category of the request was provided to the requestor. This office is unable to resolve factual disputes in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the city's representation that it provided all responsive information to the category of the request pertaining to federal funds received and used by the city.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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.

You assert that the present requests require the city to compile the criminal history of the individual named in the requests for information. After reviewing the requests and the submitted information, however, we find the requestors are each seeking information pertaining to a specific criminal investigation. Accordingly, we find the named individual's right to privacy has not been implicated by these requests, and the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim a portion of the submitted information consists of records of the judiciary. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of "governmental body" under Act specifically excludes the judiciary). Information that is "collected, assembled, or maintained by or for the judiciary" is not subject to the Act. *Id.* § 552.0035(a); *see also* TEX. SUP. CT. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act."). In this instance, you state Exhibit 4 is maintained by the city's municipal court clerk on behalf of the judiciary. Accordingly, if this information is maintained solely by the court, we agree it is not subject to release under the Act, and need not be released in response to this request.³ However, to the extent copies of the information at issue are also maintained by the city, they are subject to the Act.

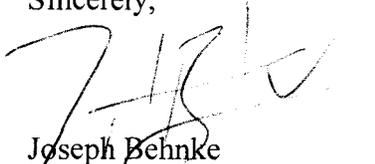
³We note that records of the judiciary may be public under other sources of law. *See* Gov't Code §§ 29.007(d)(4) (complaints filed with municipal court clerk), .007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to the office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

We note the information at issue was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-16853 (2010). In Open Records Letter No. 2010-16853, we determined, with the exception of basic information, the city may withhold the requested information under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. *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 that information is or is not excepted from disclosure). Accordingly, we conclude the city may rely on Open Records Letter No. 2010-16853 as a previous determination and withhold or release the information in accordance with that ruling.⁴

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 520629

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.