



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2014

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-16089

Dear Ms. Brown:

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# 535979 (Plano ID# ZIEV061814 and ZIEV061914).

The Plano Police Department (the "department") received two requests from the same requestor for all arrest reports up to the date of the request, as well as a specified arrest report, involving a named individual. You state you have released some of the requested information. You claim the remaining requested 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.

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, in part, requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, with the exception of the specified report, to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor may be acting as the named individual's authorized representative; therefore, she may have a right of access under section 552.023 of the Government Code to the information the department would ordinarily be required to withhold from the general public to protect the individual's privacy. Gov't Code § 552.023 (person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). As we are unable to determine whether the requestor is the named individual's authorized representative, we must rule conditionally. If the requestor is the named individual's authorized representative, then she has a special right of access to the compilation of the named individual's criminal history, to the extent it exists, and it may not be withheld from her on privacy grounds under section 552.101. However, if the requestor is not the named individual's authorized representative, then to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The requestor also seeks information pertaining to a specified arrest report. This portion of the request does not require the department to compile an individual's criminal history and does not implicate the privacy interests of the named individual. Therefore, this information is not part of a criminal history compilation and may not be withheld under section 552.101 on that basis. Consequently, we will consider your argument against disclosure of the specified arrest report.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information 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 state the Collin County District Attorney's Office has advised the release of the specified arrest report would interfere with the prosecution of its case. Based on your representation and our review, we conclude the release of the specified arrest report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the specified arrest report.

However, as you acknowledge, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have already released, the department may withhold the specified arrest report under section 552.108(a)(1) of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 130 provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is the named individual's authorized representative, then she has a special right of access to the compilation of the named individual's criminal history, to the extent it exists, and it may not be withheld from her on privacy grounds under section 552.101. However, if the requestor is not the named individual's authorized representative, then to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, with the exception of basic information, the department may withhold the specified arrest report under section 552.108(a)(1) of the Government Code. The department also must withhold the motor vehicle record information we have marked under section 552.130 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "B. Berger". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 535979

Enc. Submitted documents

c: Requestor
(w/o enclosures)