



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 24, 2009

Mr. Gary Scott  
Assistant City Attorney  
City of Conroe  
P.O. Box 3066  
Conroe, Texas 77305

OR2009-13497

Dear Mr. Scott:

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# 356245.

The City of Conroe (the "city") received a request for reports pertaining to a named individual. You state you have released basic information pertaining to report number 08042856 to the requestor.<sup>1</sup> You claim that 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.<sup>2</sup>

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

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<sup>1</sup>We assume that the basic information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c)(basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976)(summarizing types of information considered to be basic information).

<sup>2</sup>We note that the arguments set forth in the city's brief for the submitted exhibits do not match the labeling of the exhibits in the submitted information. The text of our ruling corresponds to the exhibits as marked in the submitted information rather than the exhibits as they are laid out in the city's brief. To clarify our ruling, we will refer to the reports by incident number as opposed to exhibit number, and the documents are marked accordingly.

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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 established. *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). Furthermore, 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 city to compile unspecified law enforcement records concerning the individual at issue. 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 in conjunction with common-law privacy.

We note you have submitted two responsive incident reports that do not involve the named person as suspect, arrestee, or criminal defendant. Thus, we will address your arguments under 552.108 and 552.101 in conjunction with common-law privacy for those two reports. Common-law privacy also protects information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. Generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 293 (1983), 339 (1982). However, a governmental body is required to withhold the entire report when identifying information is inextricably intertwined with other releasable information, or when the requester knows the identity of the alleged victim. *See* ORDs 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). The information in incident report number 05041958 relates to an alleged sexual assault. In this instance, the requestor knows the identity of the alleged victim. Thus, withholding only identifying information from the requestor would not preserve the victim's common-law privacy. Accordingly, we conclude that the city must withhold incident report number 05041958 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

You assert that incident report number 08042856 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable in this instance. Thus, with the exception of the basic front page offense and arrest information, which you state you have released, the city may withhold incident report number 08042856 from disclosure pursuant to section 552.108(a)(2) of the Government Code.

In summary, 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 in conjunction with common-law privacy. The city must withhold incident report number 005041958 in its entirety under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which you state you have released, the city may withhold incident report number 08042856 pursuant to 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/eeg

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Enc. Submitted documents

cc: Requestor  
(w/o enclosures)