



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-06516

Dear Ms. Dang:

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# 418889.

The City of Corpus Christi (the "city") received a request for all police reports or calls for service pertaining to a named individual during a specified time period. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 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 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 if (1) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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.

In this instance, the requestor seeks access to unspecified law enforcement records involving a named individual. Thus, this request requires the city to compile the individual's criminal history and, thereby, implicates her privacy interests. Therefore, to the extent the city maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the city has submitted information that does not depict the named individual as a suspect, arrested person, or criminal defendant. Thus, that information does not constitute a compilation of the individual's criminal history and may not be withheld as such under section 552.101 and common-law privacy. However, we will address your remaining arguments against the disclosure of this information.

We note the information at issue consists of reports of alleged sexual assaults. In Open Records Decision No. 393 (1983), this office concluded only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense generally may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy.

In this instance, the requestor knows the identity of the alleged sexual assault victim listed in a portion of the submitted information. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the city must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹ Although you also seek to withhold the remaining information in its entirety, you have not demonstrated, nor does the information reflect, that the requestor knows the identity of these alleged sexual assault victims. Thus, the city may not withhold the remaining information in its entirety under section 552.101 in conjunction with common-law privacy. However, the city must withhold the alleged sexual assault victims' identifying information, which we

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of this information.

have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.²

We note common-law privacy also includes the type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. Upon review, we find an additional portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest; therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may not withhold any portion of it under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential, including sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You inform us the city is part of an emergency communication district established under section 772.318. You state the telephone numbers you have marked relate to 9-1-1 callers and were furnished by a 9-1-1 service provider. Based on your representations, we conclude the city must withhold the marked telephone numbers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, to the extent the city maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in its entirety, as well as portions of the remaining information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The city

²As our ruling is dispositive, we need not address your remaining argument against the disclosure of a portion of this information.

must withhold the marked telephone numbers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The remaining information must be released.

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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/bs

Ref: ID# 418889

Enc. Submitted documents

c: Requestor
(w/o enclosures)