



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 5, 2012

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2012-04949

Dear Ms. Pemberton:

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# 449839 (Killeen ID# W007161).

The City of Killeen (the "city") received a request for information pertaining to a named individual. You state you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</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."<sup>2</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). 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.

The instant request is for all information involving a named individual. This request for unspecified law enforcement records requires the city to compile the criminal history of the named individual, thus implicating the named individual's right to privacy. We note, however, 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 any information the city would otherwise be required to withhold from the public to protect this individual's privacy. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). We are unable to determine whether the requestor is acting as the authorized representative of the named individual. Therefore, we rule conditionally. If the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the city determines the requestor does not have a right of access under section 552.023 as the named individual's authorized representative, the city must withhold such information under section 552.101 in conjunction with common-law privacy. If the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the city determines the requestor has a right of access under section 552.023 as the named individual's authorized representative, the city may not withhold that information from this requestor as a compilation of the named individual's criminal history under section 552.101 in conjunction with common-law privacy. We note you have submitted reports that do not depict the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld as a compilation of the named individual's criminal history under section 552.101 in conjunction with common-law privacy. We address your argument under section 552.108 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- 1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- 2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

*Id.* § 552.108(a)(1)-(2). Subsection 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while subsection 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. A governmental body claiming section 552.108 must reasonably explain how and why the subsection claimed applies to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report numbers 04-013087, 06-013954, and 11-002034 are ongoing criminal investigations. Based upon your representation and our review, we conclude that release of report number 11-002034 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). Additionally, you state report numbers 10-005290, 10-017437, and 10-017652 are criminal investigations that concluded in results other than convictions or deferred adjudication. Thus, section 552.108(a)(1) is applicable to report number 11-002034 and section 552.108(a)(2) is applicable to report numbers 10-005290, 10-017437, and 10-017652.

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; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, which the city must release, the city may withhold report number 11-002034 under section 552.108(a)(1), and report numbers 10-005290, 10-017437, and 10-017652 under section 552.108(a)(2) of the Government Code.

We note, however, report number 04-013087 pertains to a disorderly conduct offense that occurred in 2004, and report number 06-013954 pertains to an assault offense that occurred in 2006. The statute of limitations for these offenses is two years. *See* Pen. Code §§ 22.01(a)(3) (offense under section 22.01(a)(3) is a Class C misdemeanor), 42.01(a)(7) (offense is Class B or Class C misdemeanor); Crim. Proc. Code arts. 12.02(a) (indictment

or information on Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward), .02(b) (complaint or information on Class C misdemeanor may be presented within two years from date of commission of offense, and not afterward). You have neither informed this office any criminal charges were filed for either offense within the limitations period nor explained how release of the information would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has run. Thus, we find the city has failed to demonstrate the applicability of section 552.108(a)(1) to report number 04-013087 or report number 06-013954. Thus, neither report number 04-013087 nor report number 06-013954 may be withheld under section 552.108(a)(1).

We note a portion of report number 06-013954 is subject to common-law privacy. As noted above, common-law privacy protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked in report number 06-013954 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the city must generally withhold the named individual's driver's license number we have marked in report number 04-03087 under section 552.130 of the Government Code. However, we note section 552.130 is based on privacy principles. In this instance, it is not clear whether the requestor is acting as the named individual's authorized representative. As such, this requestor may have a right of access to this information, and we must rule conditionally. *See id.* § 552.023; ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). If the requestor does not have a right of access to this information, the city must withhold the information we marked under section 552.130 of the Government Code. Conversely, if the requestor has a right of access to the information at issue, the city may not withhold this information from this requestor and must release the marked driver's license number.

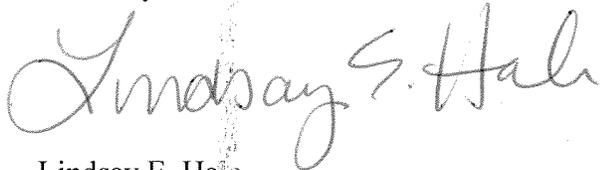
In summary, if the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the city determines the requestor does not have a right of access under section 552.023 of the Government Code as the named individual's authorized representative, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With

the exception of the basic front page offense and arrest information, the city may withhold report number 11-002034 under section 552.108(a)(1), and report numbers 10-015290, 10-017437, and 10-017652 under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked in report number 06-011954 under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the named individual's authorized representative, the city must withhold the information we have marked in report number 04-03087 under section 552.130 of the Government Code. The city must release the remaining information.<sup>3</sup>

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

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<sup>3</sup>We note the information being released contains social security numbers for individuals other than the named individual. We also note the information being released contains the named individual's social security number, to which the requestor may have a right of access as the individual's authorized representative. See generally Gov't Code § 552.023(b). Section 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. *Id.* § 552.147(b). However, the city may not withhold the named individual's social security number from this requestor if the requestor is acting as the individual's authorized representative. Additionally, we note the requestor may have a right of access to some of the remaining information being released. Accordingly, if the city receives another request for this same information from a person who does not have such a right of access, the city must again seek a ruling from this office.

Ref: ID# 44839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)