



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Mr. B. Chase Griffith
Counsel for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road
Richardson, Texas 75081

OR2012-07582

Dear Mr. Griffith:

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# 454231.

The Town of Flower Mound (the "town"), which you represent, received a request for all records of calls of service from emergency services, emergency personnel call logs, and officer notes associated with a specified address and three phone numbers, as well as any arrests of two named individuals. You state you have released some of the responsive information to the requestor. You claim that 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.

Initially, we note some of the submitted information is not responsive to the instant request because it pertains to an incident that occurred outside of the date range specified by the requestor and involves different people than those referenced in the instant request. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the town is not required to release non-responsive information in response to the request.

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. This section encompasses the common-law right to 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 met. *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. In this instance, the requestor asks for unspecified law enforcement records concerning two named individuals. This request requires the town to compile unspecified law enforcement records concerning the named individuals, thus implicating such individuals' rights to privacy. Therefore, to the extent the town maintains any law enforcement records depicting these individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted report number 12-007059, its related call report, and seven additional call reports in which these named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of either individual and may not be withheld as a compilation of their criminal histories under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, we will consider your remaining argument under section 552.108 of the Government Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the investigation pertaining to report number 12-007059 is closed, and concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to report number 12-007059 and its related call report.

However, 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). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of

¹ As our ruling is dispositive, we need not address your argument under section 552.108(a)(1) of the Government Code.

information deemed public by *Houston Chronicle*). Therefore, except for basic information, the town may withhold report number 12-007059 and its related call report under section 552.108(a)(2) of the Government Code.

We note one of the remaining call reports contains motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country.² Gov't Code § 552.130(a)(2). Accordingly, the town must withhold the information we have marked under section 552.130 of the Government Code.

In summary, to the extent the town maintains any information that lists the named individuals as suspects, arrestees, or criminal defendants, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the town may withhold report number 12-007059 and its related call report under section 552.108(a)(2) of the Government Code. The town must withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

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

Ref: ID# 454231

Enc. Submitted documents

c: Requestor
(w/o enclosures)