



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

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

OR2013-01110

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# 478055 (#W009251).

The City of Killeen (the "city") received a request for all police reports pertaining to seven named individuals.¹ You state the city has released some information to the requestor. You claim 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.

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 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

¹We note the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

(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 courthouses 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. We note the present request requires the city to compile unspecified criminal history records concerning the individuals named in the request, and thus, implicates the named individuals’ rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note, however, that you have submitted information that does not depict the named individuals as suspects, arrestees, or criminal defendants. Thus, this information is not part of the named individuals’ criminal history compilations and may not be withheld under section 552.101 on this basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find report number 12-009260 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021). Accordingly,

we find report number 12-009260 is subject to chapter 261 of the Family Code. You do not indicate the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report number 12-009260 is confidential pursuant to section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You assert some of the remaining information contains information protected by common-law privacy. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. 540 S.W.2d at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold report number 05-010451 in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, report number 05-010451 may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find that portions of report number 05-010451 are highly intimate or embarrassing and of no legitimate public concern. Accordingly, 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, however, how any of the remaining information in report number 05-010451 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

You also seek to withhold report number 10-009781 in its entirety under common-law privacy. This report relates to an alleged sexual assault. Generally, only 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, 393 (1983), 339 (1982). However, a governmental body is required to withhold the entirety of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Although you seek to withhold report number 10-009781 in its entirety, you have not demonstrated, nor does the information reflect, the requestor knows the identity of the alleged sexual assault victim in the report at issue. Thus, the city may not withhold report number 10-009781 in its entirety under common-law privacy. However, upon review, we find that portions of report number 10-009781 are highly intimate or embarrassing and of no legitimate public concern. Accordingly, 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, however, how any of the remaining information in report number 10-009781 is highly intimate or embarrassing and

not of legitimate public concern. Therefore, the city may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

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). 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 report numbers 03-010578, 08-008421, 09-010542, 11-000909, and 12-010180 relate to pending criminal investigations. Based on your representation, we conclude the release of report numbers 09-010542, 11-000909, and 12-010180 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). Therefore, section 552.108(a)(1) is generally applicable to report numbers 09-010542, 11-000909, and 12-010180.

Although you also claim report numbers 03-010578 and 08-008421 relate to pending criminal investigations, we note these reports pertain to an aggravated robbery offense and an aggravated assault offense, respectively. The statute of limitations for aggravated robbery is five years from the date of the offense. *See Penal Code* § 29.03 (aggravated robbery is a felony); *see also Crim. Proc. Code art. 12.01(4)(A)* (indictment or information for robbery must be presented within five years). The statute of limitations for aggravated assault is three years from the date of the offense. *See Penal Code* § 22.02 (aggravated assault is a felony); *see also Crim. Proc. Code art. 12.01(7)* (indictment or information for felony must be presented within three years). More than five years have elapsed since the events giving rise to report 03-010578. Further, more than three years have elapsed since the events giving rise to report 08-008421. You have not informed this office any criminal charges were filed within these limitations periods. Thus, we find you have failed to demonstrate the release of report number 03-010578 or 08-008421 would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the city may not withhold report number 03-010578 or 08-008421 under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) 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 . . . 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)(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)(1)(A). You state report numbers 00-017890, 01-004821, 02-006513, 04-011165, 04-015130, 05-009444, 06-008979, 06-013356, 09-000249, and 09-015148 pertain to criminal cases that did not result in convictions or deferred adjudications. Thus, we find section 552.108(a)(2) is generally applicable to this information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; 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, the city may withhold report numbers 09-010542, 11-000909, and 12-010180 under section 552.108(a)(1) of the Government Code and report numbers 00-017890, 01-004821, 02-006513, 04-011165, 04-015130, 05-009444, 06-008979, 06-013356, 09-000249, and 09-015148 under section 552.108(a)(2) of the Government Code.

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.² Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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 report number 12-009260 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked in report numbers 05-010451 and 10-009781 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report numbers 09-010542, 11-000909, and 12-010180 under section 552.108(a)(1) of the Government Code and report numbers 00-017890, 01-004821, 02-006513, 04-011165, 04-015130, 05-009444, 06-008979, 06-013356, 09-000249, and 09-015148 under section 552.108(a)(2) of the Government Code. The city must withhold the information we

²The 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).

have marked under section 552.130 of the Government Code. The city must release the remaining information.³

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 478055

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information contains social security numbers. 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. See Gov't Code § 552.147(b).