



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2013

Ms. Rachel L. Lindsay  
Counsel for the Town of Flower Mound  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-03926

Dear Ms. Lindsay:

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# 480792.

The Flower Mound Police Department (the "department"), which you represent, received a request for any and all records pertaining to five named individuals at a specified address. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault,

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<sup>1</sup>The 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. 481,480 (1987), 470 (1987).

pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found that the 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) (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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

This request, which requires the department to compile unspecified law enforcement records concerning the named individuals, implicates these individuals' right to privacy to the extent they are identified as suspects, arrestees, or criminal defendants in the reports. Therefore, to the extent the department maintains any law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code 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 argument against disclosure of this information.

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[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information at issue pertains to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

We note, 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). Basic information refers to the 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), *writ ref'd n.r.e. per*

*curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, the information at issue may be withheld under section 552.108(a)(2) of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the information at issue may be withheld under 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 480792

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)