



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2013

Mr. James McKechnie  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2013-04525

Dear Mr. McKechnie:

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# 481674 (City ID# 1).

The City of Wichita Falls (the "city") received a request for all records pertaining to a named individual.<sup>1</sup> 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 (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*

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<sup>1</sup>You indicate the city sought 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).

*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 individual named in the request, and thus, implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, 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 individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of the named individual's criminal history compilation and may not be withheld under section 552.101 on this basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.108(a)(1) of the Government Code exempts 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 have submitted documentation from the city's police department stating report number 08-111541 is an open case still under investigation and its release would interfere with the detection, investigation, or prosecution of crime. However, report number 08-111541 relates to a burglary of a vehicle offense that occurred on November 19, 2008. The longest possible statute of limitations for this offense is two years. *See Penal Code § 30.04* (burglary of a vehicle is a Class A misdemeanor); *see also Crim. Proc. Code art. 12.01* (an indictment or information for a misdemeanor must be brought within two years). You have not informed this office any criminal charges were filed within the limitations period for this case. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of a crime. Thus, report number 08-111541 may not be withheld under section 552.108(a)(1).

We note some of report number 08-111541 is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides information relating to a motor vehicle operator's license,

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<sup>2</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 (1987), 480 (1987), 470 (1987).*

driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record 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 individual as a suspect, arrestee, 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 motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information in report number 08-111541 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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/tch

Ref: ID# 481674

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

