



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2013

Ms. Elizabeth L. White
Counsel for the City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2013-05169

Dear Ms. White:

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# 482907 (LCPD File No. PIR #2489, RBMCC Ref. No. 3607-1 PIR #2489).

The League City Police Department (the "department"), which you represent, received a request for all reports regarding the requestor and a named individual from January 1, 2012, to the date of the request. You state you have released or will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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.

You state the present request requires the department to compile unspecified law enforcement records concerning the named individual who is not the requestor and thus implicates this individual's right to privacy. However, after reviewing the request and the submitted information, we find the requestor is seeking specific reports involving himself and the named individual. Accordingly, the request does not implicate the named individual's right to privacy regarding this information. We also note you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. Accordingly, we will address your remaining arguments for the submitted information.

Section 552.101 of the Government Code also encompasses information protected by statute, such as section 261.201 of the Family Code, which provides in relevant part:

[T]he following information is confidential, is not subject to public release under [the Act], 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth

Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the information in Exhibit A1 and event report number 12-2534 in Exhibit B2 were used or developed in an investigation by the department of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). In this instance, however, the requestor is the parent of the child victim named in the report. Further, the parent is not the individual alleged to have committed the alleged abuse. *See* Fam. Code § 261.201(k). Accordingly, the department may not withhold the information at issue from the requestor under section 261.201(a). *Id.* However, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will consider your remaining arguments against disclosure.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, 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 Exhibit B1 relates to a pending criminal prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of Exhibit B1 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).

Section 552.108(a)(2) of the Government Code 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 requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state Exhibits A1, A2, A3, and B2 pertain to cases that concluded in a result other than conviction or deferred adjudication. However, you have also submitted documentation from the department which states report number 12-2505, which is contained in Exhibit A2, pertains to a case in which the defendant pled guilty and is currently serving probation. Because you have provided this office with contradictory representations regarding report number 12-2505, we find you have failed to demonstrate the applicability of section 552.108 to this information. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the department may not withhold report number 12-2505 under section 552.108 of the Government Code. However, we agree section 552.108(a)(2) is applicable to Exhibits A1, A3, and B2, and the remaining report in Exhibit A2, which we have marked.

However, as you acknowledge, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information includes a detailed description of the offense and an identification and description of the complainant, but does not include motor vehicle record information encompassed by section 552.130 of the Government Code or information pertaining to witnesses. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit B1 from disclosure based on section 552.108(a)(1) of the Government Code and Exhibits A1, A3, B2, and the report we have marked in Exhibit A2 from disclosure based on section 552.108(a)(2) of the Government Code.²

You seek to withhold some of the basic information under the common-law informer's privilege, which is also encompassed by section 552.101 of the Government Code. The common-law informer's privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state the information in Exhibit A2 reveals the identities of complainants who reported possible violations of city or state laws to the department. You state the department has enforcement authority over the potential violations, which carry a civil or criminal penalty. There is no indication the subjects of the complaints know the identities of the complainants. Based on your representations and our review, we conclude the department may withhold the complainants' identifying information in Exhibit A2, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining information you have marked does not identify an informer and may not be withheld on this basis.

Finally, section 552.130(a)(2) of the Government Code provides that information relating to a 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)(2). The department must withhold the motor vehicle record information we have marked in the remaining information under section 552.130(a)(2) of the Government Code.³ However, we find none of the remaining information you have marked consists of motor vehicle information subject to section 552.130 of the Government Code. Accordingly, none of the remaining information may be withheld on this basis.

In summary, with the exception of basic information, which must be released, the department may withhold Exhibit B1 under section 552.108(a)(1) of the Government Code and Exhibits A1, A3, B2, and the report we have marked in Exhibit A2 under section 552.108(a)(2) of the Government Code. The department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and must withhold the motor vehicle record information we have marked under

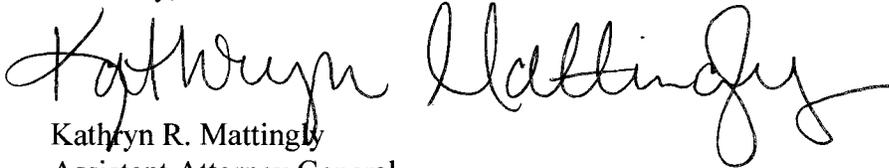
³We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.130(a)(2) of the Government Code. The remaining information must be released.⁴

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 482907

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note this requestor has a special right of access under section 261.201(k) of the Family Code to some of the information being released. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.