



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2013

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2013-10163

Dear Mr. Bilbie:

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# 490364.

The Harlingen Police Department (the "department") received a request for all police reports regarding a named person. 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 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.

The present request requires, in part, the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, 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 argument for this information.

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 case number 2009-00019316 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to case number 2009-00019316.

However, 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 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); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, you may withhold case number 2009-00019316 from disclosure based on section 552.108(a)(2) of the Government Code.

We understand you to assert some of the basic information is subject to common-law privacy. As noted above, common-law privacy protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*, which includes 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. *See Indus. Found.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is both highly intimate or embarrassing and of no legitimate public interest. Accordingly, in releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in

conjunction with common-law privacy. However, we find no portion of the remaining basic information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department may not withhold any of the remaining basic information under section 552.101 on the basis of common-law privacy.

In summary, to the extent the department maintains law enforcement records depicting the named individual as suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic front page offense and arrest information, the department may withhold case number 2009-00019316 from disclosure based on section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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# 490364

Enc. Submitted documents

c: Requestor
(w/o enclosures)