



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2014

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2014-00095

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# 509653.

The Killeen Police Department (the "department") received a request for all information pertaining to a named individual, including report numbers 10-008984, 11-003177, and 13-007330. You state the department has released some of the requested information. You state the department will redact certain motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.¹ You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See id.* § 552.147(b).

have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all information pertaining to a named individual. This portion of the request requires the department to compile unspecified law enforcement records concerning the named individual, thus implicating the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a 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. However, the department submitted offense reports, including report numbers 10-008984, 11-003177, and 13-007330, which do not depict the named individual as a suspect, arrestee, or a criminal defendant. These reports do not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101.

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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.*

²We 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 that those records contain substantially different types of information than that submitted to this office.

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 12-013726 relates to a pending criminal prosecution being conducted by the Killeen District Attorney's Office (the "district attorney's office") and the district attorney's office objects to release of report number 12-013726 because such release would interfere with the pending prosecution. You also state report numbers 13-002387, 13-005877, and 13-007330 each relate to pending criminal prosecutions being conducted by the Killeen County Attorney's Office (the "county attorney's office") and the county attorney's office objects to release of these reports because such release would interfere with the pending prosecutions. Further, you state report numbers 10-008984, 11-004237, and 11-003177 each relate to pending criminal investigations being conducted by the department. Based upon these representation and our review, we find release of the information at issue 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). Accordingly, we find section 552.108(a)(1) is applicable to report numbers 10-008984, 11-004237, 11-003177, 12-013726, 13-002387, 13-005877, and 13-007330.

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 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 01-010233, 03-001669, 03-008895, 05-009750, and 06-013411 each relate to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to report numbers 01-010233, 03-001669, 03-008895, 05-009750, and 06-013411.

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*. *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 department may withhold report numbers 10-008984, 11-004237, 11-003177, 12-013726, 13-002387, 13-005877, and 13-007330 under section 552.108(a)(1) of the Government Code and report numbers 01-010233, 03-001669, 03-008895, 05-009750, and 06-013411 under section 552.108(a)(2) of the Government Code.

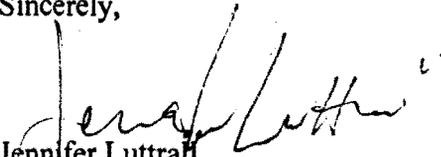
In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold

any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold report numbers 10-008984, 11-004237, 11-003177, 12-013726, 13-002387, 13 005877, and 13-007330 under section 552.108(a)(1) of the Government Code and report numbers 01-010233, 03-001669, 03-008895, 05-009750, and 06-013411 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 509653

Enc. Submitted documents

c: Requestor
(w/o enclosures)