



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2014

Mr. Grant Jordan
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-00330

Dear Mr. Jordan:

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# 510076.

The City of Fort Worth (the "city") received a request for information pertaining to a named individual, including a specified report.¹ You state the city will redact the originating telephone numbers and addresses of 9-1-1 callers pursuant to Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011), certain motor vehicle record information pursuant to section 552.130(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the

¹You state the city sought and received 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).

²Open Records Letter Nos. 2011 -15641 and 2011 -15956 are previous determinations issued to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, of 9-1 -1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of Government Code). Section 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.* Code § 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 under the Act. *Id.* § 552.147(b).

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. You claim section 552.101 in conjunction with 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). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request, in part, seeks all information pertaining to the named individual. This aspect of the request requires the city to compile the named individual's criminal history and implicates this individual's privacy. Therefore, to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information relating to the incident specified by the requestor. Furthermore, you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address your remaining arguments against disclosure of this information.

As previously noted, section 552.101 of the Government Code encompasses common-law privacy. Common-law privacy is subject to the two-part test discussed above. *Indus. Found.*, 540 S. W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold report number 11-24234 in its entirety, you have not

demonstrated, nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, report number 11-24234 may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find that portions of report number 11-24234 are highly intimate or embarrassing and of no legitimate public concern. Accordingly, except where we have marked for release, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining information in report number 11-24234 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 09-34121 pertains to case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 basic information, you may withhold report number 09-34121 based on section 552.108(a)(2) of the Government Code.³

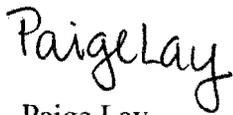
In summary, to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Except where we have marked for release, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 09-34121 based on section 552.108(a)(2) of the Government Code. The city must release the remaining information.

³As our ruling is dispositive, we need not address your remaining argument against its disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 510076

Enc. Submitted documents

cc: Requestor
(w/o enclosures)