



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2014

Ms. Janis K. Hampton
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2014-03113

Dear Ms. Hampton:

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# 514545.

The City of Bryan (the "city") received a request for information pertaining to a named individual, including a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 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 public 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. This office has found 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) (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. Further, 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 seeks all reports pertaining to a named individual. This request, in part, requires the city to compile the named individual's criminal history and implicates the named individual's right to privacy. However, upon review of the request and the submitted information, we find the requestor is, in part, seeking domestic violence reports involving himself and the named individual. Thus, this portion of the request does not implicate the named individual's right to privacy, and the domestic violence reports involving the requestor and the named individual may not be withheld under section 552.101 of the Government Code on the basis of the named individual's privacy interests as a compilation of her criminal history. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. Further, a portion of the request seeks a specified incident report. This information does not consist 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. However, to the extent the city maintains unspecified law enforcement records, other than the domestic violence reports involving the requestor and the named individual, 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.

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(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 report number 13-0401037 pertains to a criminal case pending prosecution. Based on your representation, we conclude the release of report number 13-0401037 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). Thus, section 552.108(a)(1) is applicable to report number 13-0401037.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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 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 assert report numbers 11-1200519, 11-0700466, 12-1200300, 12-1200310, and 12-1200451 relate to cases which did not result in convictions or deferred adjudications. You further state "these matters were either refused for prosecution[,] the complainants did not follow through with their complaints[,] or the cases were suspended for lack of evidence, or were unfounded." Based on these

representations and our review, we agree section 552.108(a)(2) is applicable to report numbers 11-1200519, 11-0700466, 12-1200300, 12-1200310, and 12-1200451.

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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold report number 13-0401037 under section 552.108(a)(1) of the Government Code and report numbers 11-1200519, 11-0700466, 12-1200300, 12-1200310, and 12-1200451 under section 552.108(a)(2) of the Government Code.¹

We understand you to raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the basic information. Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find you have not demonstrated how any portion of the basic information consists of CHRI for purposes of chapter 411 of the Government Code, and the city may not withhold any of the basic information under section 552.101 of the Government Code on that basis.

In summary, to the extent the city maintains law enforcement records, other than the domestic violence reports involving the requestor and the named individual and the specified report, depicting the named individual as a suspect, arrestee, or criminal

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

defendant, the city must withhold such information 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 13-0401037 under section 552.108(a)(1) of the Government Code and report numbers 11-1200519, 11-0700466, 12-1200300, 12-1200310, and 12-1200451 under section 552.108(a)(2) of the Government Code.²

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 Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 514545

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains social security numbers. 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 requesting a decision from this office under the Act. Gov't Code § 552.147(b). The requestor, however, has a right of access to his own social security number. *See id.* § 552.023(b).