



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2014

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2014-03561

Dear Ms. Benton:

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# 518058 (City of Waco Reference No. LGL-14-011).

The City of Waco (the "city") received a request for information pertaining to a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ 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. This section encompasses the common-law right to 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 met. *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

¹Although you do not raise section 552.130 in your brief, we understand you to raise this exception based on your markings in the submitted information.

(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. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis.

The present request seeks all information pertaining to a named individual. This request requires the city to compile unspecified law enforcement records concerning the named individual, thus implicating such individual's right to privacy. Therefore, to the extent the city maintains any law enforcement records depicting 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 which does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the individual's privacy rights. Accordingly, we will address your arguments against disclosure of this information.

We note Exhibit 4 consists of a CR-3 accident report form. Section 552.101 of the Government Code of the Government Code also encompasses information made confidential by statute. Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the city must withhold Exhibit 4 under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

You argue portions of Exhibit 5 are excepted under section 552.108 of the Government Code, which 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You have marked the information the city seeks to withhold under section 552.108. You state the marked information relates to a pending criminal investigation. Based on your representation, we find release of the marked information 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). Therefore, the city may withhold the information you have marked in Exhibit 5 under section 552.108(a)(1) of the Government Code.

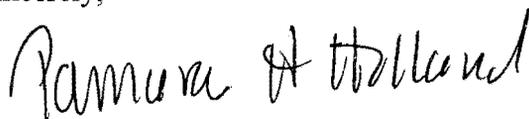
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the information you have marked, as well as the additional information we have marked, in Exhibit 5 under section 552.130 of the Government Code.

In summary, to the extent the city maintains any law enforcement records depicting 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. The city must withhold Exhibit 4 under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. The city may withhold the information you have marked in Exhibit 5 under section 552.108(a)(1) of the Government Code. The city must withhold the marked information in Exhibit 5 under section 552.130 of the Government Code. The city must release the remaining information in Exhibit 5.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 518058

Enc. Submitted documents

c: Requestor
(w/o enclosures)