



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2014-06377

Dear Ms. Sims:

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# 524552.

The Lubbock Police Department (the "department") received a request for all calls for service pertaining to two specified addresses during particular time periods. You claim the requested 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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.

Although you argue the present request requires the department to compile an individual's criminal history, the request is for information pertaining to two specified addresses. This request does not implicate the privacy interests of any individual. Therefore, the department may not withhold any portion of the requested information as a compilation of a private citizen's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy.

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 state some of the submitted information pertains to criminal investigations that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit B.

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 basic "front-page" offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold Exhibit B under section 552.108(a)(2) of the Government Code.

You argue portions of the remaining information in Exhibit C are confidential under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981)

(citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You seek to withhold the identities of individuals who reported alleged criminal violations to the department. Upon review, we find you have demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, the department may withhold the identifying information of the complainants in Exhibit C, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not demonstrated how any of the remaining information in Exhibit C identifies an individual who made the initial report of a criminal violation to the department for purposes of the informer's privilege. Thus, the department may not withhold the remaining information at issue under section 552.101 in conjunction with the informer's privilege.

In summary, with the exception of the basic information, the department may withhold Exhibit B under section 552.108(a)(2) of the Government Code. The department may withhold the identifying information of the complainants in Exhibit C, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must release basic information from Exhibit B and the remaining information in Exhibit C.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 524552

Enc. Submitted documents

c: Requestor
(w/o enclosures)