



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2014

Mr. Michael A. Guevara
Counsel for the City of Burkburnett
Guevara Decker Arrott
1322 Hunter Ace Way
Cedar Park, Texas 78613

OR2014-11299

Dear Mr. Guevara:

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# 527550.

The City of Burkburnett (the "city"), which you represent, received a request for all police records involving eleven named individuals during a specified time period. You state the city is releasing some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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." 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. 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.

Upon review, we find the present request requires the city to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the request implicates the named individuals' rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, you have submitted reports which do not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Thus, this information may not be withheld under section 552.101 in conjunction with common-law privacy as a criminal history compilation. Accordingly, we will address your argument against disclosure of this information.

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 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 the information at issue relates to concluded cases that did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the information at issue.

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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the information at issue under section 552.108(a)(2) of the Government Code.¹

In summary, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which must be released, the city may withhold the information at issue under section 552.108(a)(2) of the Government Code.

¹As our ruling is dispositive, we need not address your remaining argument against 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 527550

Enc. Submitted documents

c: Requestor
(w/o enclosures)