



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2014

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2014-16507

Dear Mr. Smith:

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# 536494 (Richardson Reference No. 14-452).

The Richardson Police Department (the "department") received a request for information pertaining to a specified incident and pertaining to two named individuals for a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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." Gov't Code § 552.101. Section 552.101 of the Government Code 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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 individual has significant privacy interest in compilation of one's criminal history). 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, in part, requires the department to compile unspecified law enforcement records concerning the two named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information in which the named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals and may not be withheld under section 552.101 of the Government Code as a compilation of criminal history. However, some of this information is otherwise subject to common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). 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 submitted information must be withheld in its entirety to protect the individual's privacy.

You claim the information at issue is protected in its entirety by common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on that basis. Thus, the department may not withhold the information at issue in its entirety 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 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 incident numbers 201400061039, 201400061111, 201200055170, 201200098826, 201300072054, 201300106626, 201300150529, 201400012765, 201400029269, 201400051051, 201400062492, and 201400075310 pertain

to closed cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publ’g 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). The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Further, in Open Records Decision No. 649 (1996), this office concluded information contained in a computer-aided dispatch report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.¹

You claim some of the basic information in incident report numbers 201400075310 and 201400062492 is subject to section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. 540 S.W.2d at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* ORD 455. Upon review, we find the information you have marked, and the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the department maintains unspecified law enforcement depicting the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold incident report numbers 201400061039, 201400061111, 201200055170, 201200098826, 201300072054, 201300106626, 201300150529, 201400012765, 201400029269, 201400051051, 201400062492, and 201400075310 under

¹As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure, except to note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code.

section 552.108(a)(2) of the Government Code. In releasing basic information from incident report numbers 201400075310 and 201400062492, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 536494

Enc. Submitted documents

c: Requestor
(w/o enclosures)