



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2014

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2014-20955

Dear Ms. Pemberton:

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# 543349 (Killeen ID# W014346).

The Killeen Police Department (the "department") received a request for all records during a two-year period for a named individual. You state the department has released some of the information. You claim the submitted 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 from 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 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 established. *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. We agree the present request requires the department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates that individual's right to privacy. But in this instance we find the requestor is seeking the records as the authorized representative of the named individual, who is her husband. Therefore, the requestor has a right of access to information that would otherwise implicate the named individual's right to privacy. *See* Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individuals request information concerning themselves). We conclude the department may not withhold the submitted information from the requestor 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 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)(1)(A); *Open Records Decision No. 434 at 2-3* (1986). You state the submitted information concerns department investigations that have concluded and did not result in convictions or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) of the Government Code is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 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). This information includes, but is not limited to, a detailed description of the offense. *See* *Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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](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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a large initial "N" and "F".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

Ref: ID# 543349

Enc. Submitted documents

c: Requestor  
(w/o enclosures)