



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2014

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-21406

Dear Ms. Russell:

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# 544003.

The City of Southlake (the "city"), which you represent, received a request for all reports pertaining to a named individual, including a specified report. 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.

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 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) (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 that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records that depict the named individual as a suspect, arrested person, or criminal defendant, with the exception of the specified report, they must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The requestor also seeks information pertaining to a specified report. This portion of the request does not require the city to compile an individual's criminal history and does not implicate the privacy interests of the named individual. Therefore, this information is not part of a criminal history compilation and may not be withheld under section 552.101 of the Government Code on that basis. Consequently, we will consider your arguments against disclosure of the specified report you have marked as Exhibit B-1.

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 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 the information in Exhibit B-1 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to Exhibit B-1.

We note basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such 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 considered to be basic information). Thus, with the exception of basic information, the city may withhold Exhibit B-1 under section 552.108(a)(2) of the Government Code.

You seek to withhold the basic information in Exhibit B-1 in its entirety under 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. 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 information must be withheld in its entirety to protect the individual's privacy. We note you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue 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. However, upon review, we find the information we have marked within the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, when releasing basic information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the city maintains any law enforcement records that depict the named individual as a suspect, arrested person, or criminal defendant, with the exception of the specified report, they must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold the specified report marked as Exhibit B-1 under section 552.108(a)(2) of the Government Code. When releasing basic information, the city must withhold the 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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 544003

Enc. Submitted documents

c: Requestor
(w/o enclosures)