



January 8, 2015

Mr. Richard L. Bilbie  
City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551-2207

OR2015-00333

Dear Mr. Bilbie:

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# 549246.

The City of Harlingen (the "city") received a request for information pertaining to a specified ticket number and a named individual, including all documents, charges, and rulings. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code and protected under rule 12 of the Rules of Judicial Administration. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the requested information encompasses information maintained by both the city's police department and the city's municipal court. The Act is applicable to information "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body[.]" Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). You claim some of the submitted information is exempt from disclosure under

rule 12 of the Rules of Judicial Administration. Rule 12 governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov't Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a "judicial record" as "a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]" TEX. R. JUD. ADMIN. 12.2(d). You indicate some of the submitted information constitutes court records maintained by the city's municipal court. Accordingly, to the extent the information at issue is maintained solely by the city's municipal court, we find it consists of records of the judiciary that are not subject to the Act and need not be released in response to the request.<sup>1</sup> However, to the extent the information at issue is also maintained by the city's police department, and is not maintained solely by the city's municipal court, it is subject to the Act and must be released unless the information falls within an exception to disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. In that instance, we will address your remaining arguments against disclosure of this information.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents, which we have marked, that are subject to section 552.022(a)(17) and must be released unless they are made confidential under the Act or other law. *See id.* Although you assert this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Furthermore, although you raise section 552.108 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the marked court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. However, we will

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<sup>1</sup>In that instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of the information that is not subject to the Act.

address your arguments for the remaining information, which is not subject to section 552.022.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, we note the public has a legitimate interest in knowing the general details of a crime. *See generally Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345–46 (1994))). Upon review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

You raise section 552.108 of the Government Code for the submitted information, which provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code § 552.108(a)(1), (b)(1). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if release of the information would interfere with a pending criminal investigation or prosecution. *See 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) (court delineates law enforcement interests that are present in active cases). Section 552.108(b)(1) is applicable to internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body that raises section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See Gov't Code* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state release of the remaining information would interfere with the detection, investigation, or prosecution of crime. You further argue the release of the remaining information would reveal internal information about police procedures in detecting, investigating, and prosecuting crime. You state the remaining information relates to a case that is closed. Upon review, we find the city has not adequately demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Further, we find you have failed to demonstrate how release of any of the remaining information would interfere with law enforcement or crime prevention. *See id.* § 552.108(b)(1). We therefore conclude the city may not withhold the remaining information under either section 552.108(a)(1) or 552.108(b)(1) of the Government Code.

We note portions of the remaining information are subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent the information at issue is maintained solely by the city's municipal court, it consists of records of the judiciary that are not subject to the Act and need not be released in response to this request. To the extent the information is maintained by the city's police department, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information.

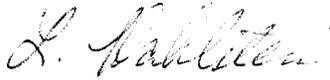
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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

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,



Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/som

Ref: ID# 549246

Enc. Submitted documents

c: Requestor  
(w/o enclosures)