



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Ms. Julie P. Doshier
For the City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-05320

Dear Ms. Doshier:

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# 556937 (Reference #69710, 2014-257).

The City of Highland Village (the "city"), which you represent, received a request for all police calls and police reports during a specified time period for a specified address and a named individual. You state the city has released some of the requested information to the requestor. Additionally, you state the city will redact the social security numbers you have marked in the submitted information pursuant to section 552.147(b) of the Government Code.¹ 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. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

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 depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 on that basis. Therefore, we will address your arguments against the disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, the following:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct"). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See id.* § 51.02(2). Upon review, we find some of the submitted reports involve children engaged in delinquent conduct that occurred after September 1, 1997. As such, this information is subject to section 58.007(c). With respect to the reports we have marked, it does not appear that any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the city must withhold the reports we have marked in their entireties under section 552.101 in conjunction with section 58.007(c).²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

However, in her comments submitted to this office, the requestor states she is a parent of the juvenile offender at issue in incident report numbers 14HP009399 and 14HP011775. Therefore, in accordance with section 58.007(e), the city may not use section 58.007(c) to withhold this information from this requestor. *See id.* § 58.007(e). We note, however, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining arguments against disclosure of this information.

Section 552.108 of the Government Code provides, in relevant parts, as follows:

(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; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide supporting documentation from the city's police department (the "department") representing, incident report number 14HP011775 pertains to a criminal case that is active and pending prosecution. Based upon these representations and our review, we find release of incident report number 14HP011775 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we conclude the city may withhold the information you have marked in incident report number 14HP011775 under section 552.108(a)(1).³

A governmental body claiming section 552.108(a)(2) of the Government Code must demonstrate the information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.301(e)(1)(A). You submit supporting documentation from the department

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

representing incident report number 14HP009399 pertains to a closed criminal case that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to incident report number 14HP009399.

As you acknowledge, however, section 552.108 of the Government Code does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The city must release basic information, even if the information does not literally appear on the front page of an offense report. However, we note that basic information described in *Houston Chronicle* does not include information that is subject to section 552.130 of the Government Code. Thus, we conclude, with the exception of the basic information, which must be released, the city may withhold incident report number 14HP009399 under section 552.108(a)(2) of the Government Code.⁴

You state the city will withhold the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.⁵ Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We conclude the city must withhold the information you have marked and the additional information we have marked under section 552.130.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the reports we have marked in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city may withhold the information you have marked in incident report number 14HP011775 under section 552.108(a)(1) of the Government Code. With the exception of the basic information, the city may withhold incident report number 14HP009399 under section 552.108(a)(2) of the Government Code. The city must withhold the information you have marked and the additional information we have marked

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

under section 552.130 of the Government Code. The city must release the remaining information.⁶

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 556937

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶We note the information being released from incident report numbers 14HP009399 and 14HP011775 is confidential with respect to the general public. See Fam. Code § 58.007(e). Therefore, if the city receives another request for incident report numbers 14HP009399 and 14HP011775 from an individual other than this requestor, the city must again seek a ruling from this office.