



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2015

Ms. Julie P. Doshier
Counsel for City of Farmers Branch
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-07063

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# 563054 (Ref. No. 70422).

The City of Farmers Branch (the "city"), which you represent, received a request for all police reports involving a named individual from 2014, specifically including reports of incidents that occurred in March and April 2014. You state the city has released some responsive information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.136, and 552.147 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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. This office has found 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. 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 that 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 a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request seeks all reports pertaining to a named individual during a specified time frame. This request requires the city to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the city may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). You inform us the requestor has not provided the city with two or more of the three requisite pieces of information specified by the statute. Accordingly, the city must withhold the submitted CR-3 accident report form, which you have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.¹

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. You state the information you have marked relates to a concluded case that did not result in a conviction or deferred adjudication. Based on this representation, we agree that section 552.108(a)(2) is applicable

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

to the information at issue. Therefore, the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code.²

You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.³ We note the remaining information contains additional information subject to section 552.130, which 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 id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we agree the city may withhold the social security numbers you have marked under section 552.147 of the Government Code.

You claim some of the remaining information is excepted from disclosure under sections 552.102(a) and 552.117(a)(1) of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). However, sections 552.102 and 552.117 are applicable only to information the city holds in an employment context. The information you have marked under sections 552.102 and 552.117 is contained within law enforcement records and, thus, we find the city does not maintain the information in an employment capacity. Therefore, the city may not withhold any of remaining information under section 552.102 or section 552.117 of the Government Code.

In summary, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such

²As our ruling is dispositive, we do not address your other argument to withhold this information.

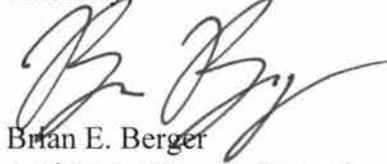
³You state you will redact information subject to section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009). However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) of the Government Code without the necessity of seeking a decision from the attorney general. If a governmental body redacts such information, then it must notify the requestor in accordance with section 552.130(e). *See Gov't Code* § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted CR-3 accident report form, which you have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The city must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The city may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 563054

Enc. Submitted documents

c: Requestor
(w/o enclosures)