



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2015

Mr. John Haislet
Assistant City Attorney
Legal Department
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2015-07288

Dear Mr. Haislet:

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# 558267.

The City of College Station (the "city") received two requests for all police reports related to two named individuals or a specified address. The second requestor also requested all police reports related to two additional named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have also received comments from the Texas Department Public Safety (the "department"). *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). We have considered the submitted arguments and reviewed the submitted information.

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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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 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 part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. The city contends the present request requires the city to compile unspecified law enforcement records concerning the named individuals. However, the city has only submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the named individuals' criminal histories, and the city may not withhold any information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.0665(b). Section 550.065(c)(4) provides for 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). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. The submitted information contains a CRB-3 Texas Peace Officer's Crash Report. In this instance, neither requestor has provided the city with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the city must withhold the submitted CRB-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code from these requestors.

Section 552.108(b) excepts from disclosure "[a]n 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 . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). This section is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might

compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The department asserts the information it marked reveals security techniques and tactical plans of a law enforcement agency, the Executive Protection Bureau (the "EPB"). The department explains revealing the information at issue would "divulge information useful to those that would wish harm on the public figures afforded protection by the [EPB]," and the release of the information "would jeopardize the use of [the EPB's law enforcement] techniques and plans currently and in the future, and endanger the safety of the EPB agents and those they are assigned to protect." Upon review, we find the release of the information the department has marked would interfere with law enforcement. Therefore, the city may withhold the information the department has marked under section 552.108(b)(1) of the Government Code.¹

Section 552.130 of the Government Code excepts from disclosure 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 this state or another state or country.² Gov't Code § 552.130(a). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

¹As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.

²The 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).

In summary, the city must withhold the submitted CRB-3 accident report 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 the department has marked under section 552.108(b)(1) of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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,



Handwritten signature of Joseph Behnke in black ink, consisting of stylized initials and a surname.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 558267

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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