



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2015

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

OR2015-11973

Dear Mr. Shelby:

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# 567635 (City Internal Ref. No. OR-1831 - SPD#069).

The Sherman Police Department (the "department") received a request for reports relating to a named individual, to include information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim 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. 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in

courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request requires the department to compile unspecified law enforcement records concerning the named individual. Accordingly, we find the request implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, the department has submitted a report which does not list the named individual as a suspect, arrestee, or criminal defendant. Further, the department has submitted information pertaining to the specified arrest. This information does not implicate the privacy interests of the named individual, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation.

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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the information at issue relates to concluded cases that did not result in convictions or deferred adjudication. Based on the department's representation, we conclude section 552.108(a)(2) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 567635

Enc. Submitted documents

c: Requestor
(w/o enclosures)