



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2016

Mr. T. Daniel Santee
Counsel for City of Cibolo
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2016-00956

Dear Mr. Santee:

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# 593939.

The City of Cibolo (the "city"), which you represent, received two requests from separate individuals. The first requestor seeks all records for two named individuals and a specified address for a specified time period. The second requestor seeks a specified report. 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.

Initially, with respect to the specified report responsive to the second request, you raise section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending criminal investigation and prosecution. Based upon your representation and our review, we conclude that the release of the information at issue, which we have marked, 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, section 552.108(a)(1) is applicable to report number 15-01280.

However, section 552.108 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*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold report number 15-01280, which we have marked, from the second requestor under section 552.108(a)(1) of the Government Code.

Next, we note 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.

The first request seeks unspecified reports pertaining to two named individuals. This request requires the city to compile the named individuals’ criminal histories and implicates the privacy of the named individuals. Therefore, to the extent the city maintains unspecified law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to the named individuals solely as victims, witnesses, or involved persons is not private as criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Thus, we will address your arguments against disclosure of this information.

You claim the remaining information is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in 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 a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information pertains to criminal investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we find that section 552.108(a)(2) is applicable to the remaining information.

However, as previously noted, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Thus, with the exception of basic information, the city may withhold the remaining information from the first requestor under section 552.108(a)(2) of the Government Code.¹

In summary, except for basic information, which must be released, the city may withhold from the second requestor the information we have marked under section 552.108(a)(1). To the extent the city maintains law enforcement records listing any of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, which must be released, the city may withhold from the first requestor the remaining information 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

¹As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

Ref: ID# 593939

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)