



February 5, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2015-02296

Dear Ms. Pemberton:

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# 552757 (Open Records Request No. W014910).

The City of Killeen (the "city") received a request for reports filed against a named individual, including domestic violence reports filed by the requestor against the named individual during a specified period of time. You state the city released some of the requested information. 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 from disclosure "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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 elements of the test must be established. *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.

You assert the present request seeks unspecified records pertaining to the named individual. Upon review, we find the request, in part, seeks unspecified law enforcement records pertaining to this named individual. This part of the 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 unspecified 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 find the requestor is seeking, in part, specific incident reports and domestic violence reports involving herself and the named individual. Thus, this portion of the request does not implicate the named individual's right to privacy, and the submitted report involving the requestor and the named individual may not be withheld under section 552.101 on the basis of the named individual's privacy interests as a compilation of his criminal history. We will, however, consider your remaining arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code 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 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 report number 05-009039 relates to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) of the Government Code is applicable to the information at issue.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*. *See* 531 S.W.2d 177, 186-187 (Tex. Civ. App.—[14th Dist.] 1975). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, which you state the city has released, the city may withhold report number 05-009039 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the city maintains unspecified 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. With the exception of the basic information, the city may withhold report number 05-009039 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 552757

Enc. Submitted documents

c: Requestor
(w/o enclosures)