



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Rd.
Cedar Park, Texas 78613

OR2015-04760

Dear Ms. Quinn:

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# 556002 (Ref. No. 15-285).

The City of Cedar Park (the "city") received two requests from the same requestor for all information pertaining to three named individuals during a specified time period and all information pertaining to a specified police report. The city states it does not have information responsive to portions of the request.¹ The city states it will release the information in Exhibit B, including the basic information. *See* Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). The city states it will redact information pursuant to sections 552.130 and 552.147 of the Government Code.² The city claims the remaining

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov’t Code § 411.082 (2)(B)* (criminal history record information does not include driving record information).

The present request, in part, seeks all reports pertaining to the named individuals. This aspect of the 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 law enforcement records, other than information pertaining to the specified report, listing any of the named individuals 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. We note, however, the city has submitted information which does not list the named individuals as suspects, arrestees, or criminal defendants or that pertains to routine traffic violations. Additionally, the submitted information includes information relating to the specified report. This information does not implicate the privacy interests of the named individuals. Thus, this information may not be withheld under section 552.101 in conjunction with common-law privacy as a criminal history compilation. Accordingly, we will address the city’s remaining argument against disclosure of this information.

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. *Id.* § 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 city states the information in Exhibit D relates to a concluded case that did not result in a conviction or deferred adjudication.

Based on the city's representation, we conclude the city may withhold the information in Exhibit D under section 552.108(a)(2) of the Government Code.

In summary, to the extent the city maintains law enforcement records, other than information pertaining to the specified incident or routine traffic violations, listing any of the named individuals 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. The city may withhold the information in Exhibit D under section 552.108(a)(2) 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 556002

Enc. Submitted documents

c: Requestor
(w/o enclosures)