



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2015

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-05831

Dear Mr. Ortiz:

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# 557581 (El Paso Ref. No. 15-1026-5033).

The El Paso Police Department (the "department") received a request for all information available for a named individual, and information related to a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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 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. 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) (when considering prong

¹Although you raise section 552.101 of the Government Code in conjunction with constitutional privacy, you have not submitted arguments explaining how constitutional privacy applies to the submitted information. Therefore, we assume you have withdrawn this claim. See Gov't Code §§ 552.301, .302.

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 that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all information pertaining to the named individual. This aspect of the request requires the department to compile the named individual's criminal history and implicates this individual's privacy. Therefore, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the request, in part, seeks records pertaining to a specified incident report. Thus, this portion of the request does not implicate the named individual's right to privacy, and the submitted specified report may not be withheld under section 552.101 on the basis of the named individual's privacy interests as a compilation of her criminal history. Further, report numbers 12-127175, 12-171138, 12-187215, 12-199111, 12-207208, 12-213150, 12-213240, 12-213260, 12-362183, 14-096156, and 14-201118 do not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. 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 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 adjudications. 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 report numbers 12-127175, 12-171138, 12-187215, 12-199111, 12-207208, 12-213150, 12-213240, 12-213260, 12-362183, 14-096156, and 14-201118 under section 552.108(a)(2) of the Government Code.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

³We note the information being released contains social security numbers. 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 Gov't Code § 552.147(b).

Ref: ID# 557581

Enc. Submitted documents

c: Requestor
(w/o enclosures)