



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2017

Ms. T. Trisha Dang
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2017-09530

Dear Ms. Dang:

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# 656001 (ORR# W001412).

The City of Sugar Land (the "city") received a request for all police reports involving a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim.

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. This section 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*

¹Although you do not raise section 552.108 of the Government Code in your brief, we understand you to assert this exception based on your markings.

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, and we agree, the present request seeks unspecified law enforcement records pertaining to the named individual. The request requires the city to compile the named individual's criminal history and implicates the named individual's right to privacy. However, we find the requestor may be acting as an authorized representative of the named individual, in which case the requestor would have a special right of access to this individual's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Because we are unable to determine whether the requestor is acting as an authorized representative of the named individual, we rule conditionally. Accordingly, if the requestor is not acting as an authorized representative of the named individual, to the extent the city maintains law enforcement records involving 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. If, however, the requestor is acting as an authorized representative of the named individual, the city may not withhold information pertaining to the named individual under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. In that case, we will consider your remaining argument against disclosure of such information.

Section 552.108(a)(1) of the Government Code 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). A governmental body claiming section 552.108(a)(1) must 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). In this instance, although you claim the requested information as falling under section 552.108(a)(1), you have provided no arguments demonstrating release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Consequently, we conclude you have failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue, and the city may not withhold any portion of the requested information on that basis.

In summary, if the requestor is not acting as an authorized representative of the named individual, to the extent the city maintains law enforcement records involving 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. If, however, the requestor is acting as an authorized representative of the named individual, the city may not withhold information pertaining to the named individual under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. In that case, the city must release the requested 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/nmd

Ref: ID# 656001

Enc. Submitted documents

c: Requestor
(w/o enclosures)