



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2017

Ms. Sally Ortiz
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2017-19174

Dear Ms. 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# 671901 (ORR #CHRIS060617).

The Plano Police Department (the "department") received a request for information pertaining to named individuals and a specified address during a specified time period. You state you released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception 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. 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 present request, in part, requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation and may not be withheld on that basis.

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 the information at issue pertains to concluded investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) 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 information held to be public in *Houston Chronicle Publishing 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.

You assert some of the basic information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing the basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction

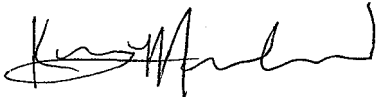
with common-law privacy. However, we find none of the remaining basic information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. In releasing the basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 671901

Enc. Submitted documents

c: Requestor
(w/o enclosures)