



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2017

Ms. Mandy Haynes
Paralegal
City of Big Spring
310 Nolan Street
Big Spring, Texas 79720-2657

OR2017-21442

Dear Ms. Haynes:

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# 675905.

The City of Big Spring (the "city") received a written request for information pertaining to a named individual. The city also received a verbal request for the same information. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

Initially, we address the verbal request for information the city received on July 14, 2017. Section 552.301(a) of the Government Code provides the following:

A governmental body that receives a *written* request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

Gov't Code § 552.301(a) (emphasis added). The duty to request a decision from this office as to whether information may properly be withheld under the Act does not arise until the governmental body receives a written request for the information. *See id.* Consequently, the verbal request the city received on July 14, 2017, did not trigger the requirements of section 552.301 of the Government Code. Therefore, this office has no jurisdiction to rule on whether the requested information is subject to disclosure to the verbal requestor under

the Act. However, we do address the city's arguments against disclosure as they pertain to the written request received June 29, 2017.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the request seeks unspecified law enforcement records concerning the named individual. Therefore, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 675905

Enc. Submitted documents

cc: Requestor
(w/o enclosures)