



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2017

Ms. Paige Saenz
Counsel for the City of Leander
The Knight Law Firm, L.L.P.
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2017-23610

Dear Ms. Saenz:

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# 680450.

The City of Leander (the "city") received a request for information pertaining to a specified address within the last two years. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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. This office has found 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You contend the present request requires the city to compile unspecified law enforcement records concerning a named individual. We note, however, the requestor is seeking information related to a specified address. Thus, we find this request does not require the city to compile any specific individual's criminal history and does not implicate the privacy interest of any individual. Accordingly, the city may not withhold any portion of the responsive information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 13, 2017 Tex. Sess. Law Serv. 3173, 3176-77 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code); Act of May 19, 2017, 85th Leg., R.S., ch. 324, § 7.002, 2017 Tex. Sess. Law Serv. 848 (to be codified as amendments to Fam. Code § 51.03(b)); Act of May 19, 2017, 85th Leg., R.S., ch. 324, § 7.002, 2017 Tex. Sess. Law Serv. 848 (to be codified as amendments to Fam. Code § 51.03(b)) (defining "conduct indicating a need for supervision").¹ Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of

¹Although you raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 13, 2017 Tex. Sess. Law Serv. 3173, 3176-77.

May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, Exhibit C involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1)-(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You do not inform us the remaining information pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1). Further, you have not demonstrated the remaining information pertains to investigations that concluded in final result other than conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(2). Therefore, the city may not withhold any of the remaining information under subsection 552.108(a)(1) or subsection 552.108(a)(2).

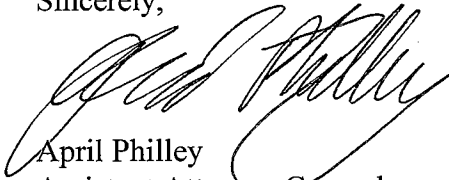
In summary, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code. The city must release the remaining information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 680450

Enc. Submitted documents

c: Requestor
(w/o enclosures)