



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2017

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-23759

Dear Mr. Gabaldón:

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# 680756 (ORR# 17-1026-8727).

The City of El Paso (the "city") received a request for all records in which a named individual is the offender and records pertaining to the requestor's client. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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.

Upon review, we find the present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual. We find this part of the request generally implicates the named individual's right to privacy. However, we note the requestor also asks for information held by the city concerning the requestor's client. This aspect of the request seeks specified records involving the requestor's client. Further, the requestor has a right of access to private information pertaining to her client pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information relating to the requestor's client may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the reports involving the requestor's client, to the extent the city maintains 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.

We note the city has submitted documents relating to incidents involving the requestor's client. This information is not part of a compilation of the named individual's criminal history, and the city may not withhold it from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this 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). The city states report numbers 17-175142, 17-167185, and 17-189133 pertain to active criminal investigations or prosecutions. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report numbers 17-175142, 17-167185, and 17-189133.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may generally withhold report numbers 17-175142, 17-167185, and 17-189133 under section 552.108(a)(1) of the Government Code.

However, we note the requestor is an investigator from the El Paso County Public Defender's Office (the "public defender's office"). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." See *id.* § 411.082(2). Thus, the information at issue contains CHRI pertaining to the requestor's client.

Accordingly, the requestor is authorized to obtain the CHRI at issue from the city pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed. See *id.* §§ 411.1272, .087(a)(2). Although the city asserts the information at issue is excepted from disclosure under section 552.108 of the Government Code, a specific statutory right of access prevails over the Act's general exceptions to public disclosure. See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general

exception to disclosure under the Act). Accordingly, if the city determines report numbers 17-175142, 17-167185, and 17-189133 relate to criminal cases in which an attorney compensated by the public defender's office is appointed, then the city must release the CHRI pertaining to the requestor's client in report numbers 17-175142, 17-167185, and 17-189133 pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code. If the city determines the information at issue does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city need not release the CHRI at issue.

In summary, with the exception of the reports involving the requestor's client, to the extent the city maintains 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. With the exception of the basic information, which must be released, the city may withhold report numbers 17-175142, 17-167185, and 17-189133 under section 552.108(a)(1) of the Government Code; however, if the city determines report numbers 17-175142, 17-167185, and 17-189133 relate to criminal cases in which an attorney compensated by the public defender's office is appointed, then the city must also release the CHRI pertaining to the requestor's client in report numbers 17-175142, 17-167185, and 17-189133 pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tdw

Ref: ID# 680756

Enc. Submitted documents

c: Requestor
(w/o enclosures)