



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 12, 2018

Ms. Sue Jana
Assistant Criminal District Attorney
Bexar County Criminal District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2018-03315

Dear Ms. Jana:

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# 695413 (DA File No. 6090).

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for the information pertaining to cases filed against a named individual, specified surveillance video recordings, and specified images depicting the named individual.¹ You state the district attorney's office has released some of the requested information. You claim the submitted information is excepted from disclosure under section

¹We note the district attorney's office received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the named individual or consist of the surveillance video recordings. The district attorney's office need not release nonresponsive information in response to this request, and this ruling will not address that 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks information pertaining to cases filed against a named individual. Thus, this portion of the request requires the district attorney's office to compile unspecified law enforcement records concerning the named individual, thus implicating the named individual's right to privacy. However, we find the part of the request that seeks specified surveillance video recordings and specified images depicting the named individual does not implicate the named individual's privacy interests. You have submitted the requested surveillance video recordings. Because this information was specifically requested it may not be withheld as part of a criminal history compilation. However, to the extent the district attorney's office maintains law enforcement records other than the specified surveillance video recordings depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182(a) of the Government Code provides in relevant part, "information . . . in the possession of a governmental entity that

relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” Gov’t Code § 418.182(a). The fact that information may be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain the submitted video recordings are surveillance video recordings of a specified bank. You state “the surveillance video system is part of the bank’s security system, which is necessary to protect bank staff and patrons, as well as private property, from possible acts of terrorism and criminal activity.” You assert the recordings contain information that identifies vulnerabilities of the system, including “the camera location[s] and angle[s], video quality and clarity, and surveillance coverage.” Upon review, we find the submitted video recordings relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images of Texas Department of Public Safety video taken from Capitol security cameras relate to specifications of security system used to protect public property from act of terrorism or related criminal activity). Accordingly, the district attorney’s office must withhold the submitted video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.


In summary, to the extent the district attorney’s office maintains law enforcement records other than the specified surveillance video recordings depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney’s office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney’s office must withhold the submitted video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 695413

Enc. Submitted documents

c: Requestor
(w/o enclosures)