



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

Ms. Tiffany Bull
Assistant City Attorney
City of Grand Prairie
P. O. Box 534045
Grand Prairie, Texas 75050

OR2019-00265

Dear Ms. Bull:

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# 744858 (GCPA 18-0060 R-1, 18-0060 R-2, 18-0060 R-3, 18-0060 R-4, 18-0060 R-5, and 18-0060 R-6).

The Grand Prairie Police Department (the "department") received five requests from different requestors for a specified incident report and two requests from different requestors for information pertaining to a named individual during two specified time periods. 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 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. 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.

We note the fifth and sixth requests require the department to compile unspecified law enforcement records concerning the individual at issue. We find these requests for unspecified law enforcement records implicate the named individual's right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the fifth requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sixth requestor represents the individual at issue and, thus, has a right of access to private information pertaining to his 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). Accordingly, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department may not withhold this information from the sixth requestor under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation.

In *Open Records Decision No. 393* (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. *Open Records Decision No. 393 at 2* (1983); *see Open Records Decision No. 339* (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); *Open Records Decision No. 440* (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the sixth and seventh requestor know the identity of the alleged victim. We believe that, in this instance, withholding only the victim's identifying information from the sixth and seventh requestors would not preserve the victim's common-law right to privacy. We conclude, therefore, the department must withhold the submitted information in its entirety from the sixth and seventh requestors pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Although you seek to withhold the submitted information in its entirety from the first, second, third, and fourth requestors, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld from these requestors on the basis of

common-law privacy. Therefore, the department may not withhold the entirety of the report from the first, second, and fourth requestors under section 552.101 on the basis of common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted information from the first, second, third, and fourth requestors pursuant to section 552.108(a)(2) of the Government Code.

You assert portions of the basic information are subject to common-law privacy. As previously noted, section 552.101 of the Government Code encompasses common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we conclude the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing basic information to the first, second, third, and fourth requestors, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining basic information from these requestors under section 552.101 in conjunction with common-law privacy.

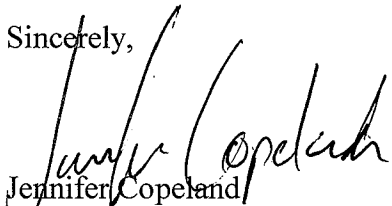
In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the fifth requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the submitted information in its entirety from the sixth and seventh requestors pursuant to section 552.101

of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the submitted information from the first, second, third, and fourth requestors pursuant to section 552.108(a)(2) of the Government Code. In releasing basic information to the first, second, third, and fourth requestors, the department must withhold the information we 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 744858

Enc. Submitted documents

c: 7 Requestors
(w/o enclosures)