



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2019

Ms. Vanessa A. Gonzalez  
Counsel for Baylor University  
Bickerstaff Heath Delgado Acosta LLP  
3711 South MoPac Expressway, Building One, Suite 300  
Austin, Texas 78746

OR2019-00968

Dear Ms. Gonzalez:

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# 745541 (Request No. 18-142).

The Baylor University Police Department (the "department"), which you represent, received a request for any information involving a named individual during a specified time period. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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 or 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue the present request seeks unspecified law enforcement records pertaining to the individual named in the request. We note, however, you have submitted law enforcement records that do not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the department may not withhold it under section 552.101 in conjunction with common-law privacy on that basis. Accordingly, we will address your remaining argument against disclosure of this information.

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. *See* 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.*; *see also id.* § 552.301(e)(1)(A). You state the submitted information pertains to a criminal case that concluded in a result other than a conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You assert the department need not release basic information in this instance on the basis of the decision in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied). However, the court in the *Carrollton* case stated "there can be no 'basic information' subject to disclosure under [section 552.108(c)] unless there has been 'an arrest' or 'a crime[,] [which] would require, in the very least, some sort of determination by law enforcement that a crime has actually occurred, if not also an arrest made, similar to the circumstances addressed in *Houston Chronicle*." *Id.* at 200. Upon review, we find you have failed to demonstrate the court's decision in *Carrollton* is applicable in this instance. Accordingly, we conclude the department must release basic information. Thus, with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) 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](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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is written in a cursive, slightly stylized font.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/gw

Ref: ID# 745541

c: Requestor