



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2019

Ms. Captoria Brown
Senior Paralegal
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2019-13774

Dear Ms. Brown:

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# 767024 (City ID 15566).

The City of Carrollton (the "city") received a request for information pertaining to a specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered arguments under sections 552.103 and 552.108 of the Government Code submitted by the Dallas County District Attorney's Office (the "district attorney's office"). See Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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 assert the present request requires the city to compile unspecified law enforcement records concerning individuals. We note, however, the request is for information pertaining to a specified address. Thus, we find this request does not require the city to compile an individual's criminal history and does not implicate the privacy interests of any individual. Accordingly, the city may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B relates to a pending criminal investigation by the city's police department. Additionally, the district attorney's office asserts the submitted information pertains to a specified pending criminal prosecution involving a named defendant. Based upon these representations and our review, we conclude release of the information you have marked in Exhibit B and the report we have marked in Exhibit C, which involves the defendant named in the pending prosecution by district attorney's office, 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 the information you have marked in Exhibit B and the report we have marked in Exhibit C. However, we find the district attorney's office has failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information and it may not be withheld on that basis.

We note, however, section 552.108 of the Government Code 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 the types of information considered to be basic information). Thus, the city may withhold the information you have marked in Exhibit B under section 552.108(a)(1) and, with the

exception of the basic information, the city may withhold the report we have marked in Exhibit C under section 552.108(a)(1) on behalf of the district attorney's office.¹

Section 552.103 of the Government Code provides, in part, the following:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). The district attorney's office asserts the submitted information relates to a pending criminal case against a named defendant. Upon review of the submitted arguments and submitted information, we find the district attorney's office has failed to demonstrate the applicability of section 552.103 to the remaining information. Thus, the city may not withhold the remaining information under section 552.103 on behalf of the district attorney's office.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *See Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure for this information, except to note basic information described in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

or embarrassing. See Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. See generally Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. See ORD 373.

Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the public citizens' dates of birth you have marked and the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information you have marked under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information you have marked under section 552.130.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). See *id.* § 552.137(c). Accordingly, the city must withhold the e-mail addresses you have marked under section 552.137 unless the owners of the addresses affirmatively consent to their release.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147(a). Upon review, we find the city may withhold the social security numbers you have marked under section 552.147.

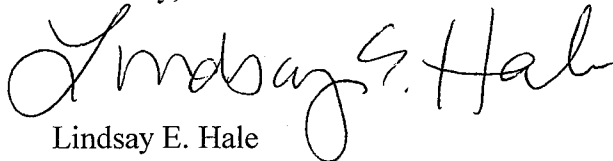
In summary, the city may withhold the information you have marked in Exhibit B under section 552.108(a)(1) of the Government Code and, with the exception of the basic information, the city may withhold the report we have marked in Exhibit C under section 552.108(a)(1) on behalf of the district attorney's office. The city must withhold the public citizens' dates of birth you have marked and the information we have marked under section

552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked under section 552.130 of the Government Code. The city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The city may withhold the social security numbers you have marked under section 552.147 of the Government Code. The city must release the remaining 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/jxd

Ref: ID# 767024

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)