



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2019

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2019-17371

Dear Mr. Scott:

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# 773353.

The City of Conroe (the "city") received a request for information pertaining to three named individuals, including two specified incidents involving the named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information pertaining to one of the specified incidents. Thus, to the extent such information existed and was maintained by the city on the date the city received the request for information, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 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.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the three individuals named in the request, thus implicating the named individuals' rights to privacy. Therefore, to the extent the city maintains unspecified law enforcement records depicting any of the named individuals as suspects, arrestees, or criminal defendants, the city must withhold any such information under section 552.101 in conjunction with common-law privacy. However, you have submitted information pertaining to one of the incidents specified by the requestor. This portion of the request does not require the city to compile an individual's criminal history and does not implicate the privacy interests of the named individuals. Accordingly, this information is not part of a criminal history compilation protected by common-law privacy and may not be withheld under section 552.101 on that basis.

Upon review, however, we agree this report contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the report from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the submitted specified report in its entirety under section 552.101 in conjunction with common-law privacy.¹

In summary, with the exception of the submitted specified report, to the extent the city maintains law enforcement records depicting any of the named individuals as suspects, arrestees, or criminal defendants, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must

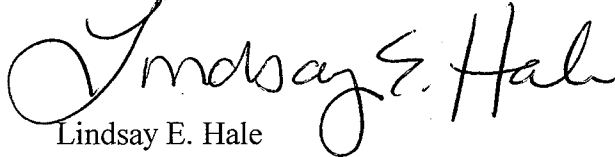
¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

withhold the submitted specified report in its entirety 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 773353

Enc. Submitted documents

c: Requestor
(w/o enclosures)