



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2019

Mr. Lance Kennedy
Counsel for the City of Denison
Messer, Rockefeller, and Fort, P.L.L.C.
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-18820

Dear Mr. Kennedy:

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# 774814 (ORR# D041919LL).

The Denison Police Department (the "department"), which you represent, received a request for offense reports or call logs pertaining to two named individuals. You state the department has released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list either of the named individuals as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation and may not be withheld on that basis.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. A governmental body claiming subsections 552.108(a)(1) and (b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has

concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state report numbers 2008-01732, 2008-11220, and 2008-14911 relate to pending criminal investigations. However, we note report number 2008-01732 pertains to an investigation of an alleged violation of section 28.03(b)(4)(A) of the Penal Code, felony criminal mischief, that occurred in 2008. We note the statute of limitations for felony criminal mischief is three years from the date of the offense. *See* Penal Code § 28.03(b)(4)(A) (criminal mischief of property valued \$1,500 or more but less than \$30,000 is a felony offense); Crim. Proc. Code art. 12.01 (7) (indictment for this category of felony may be presented within three years from date of commission of offense, and not afterward). More than three years have elapsed since the events giving rise to the investigation in this report. The department does not inform us any criminal charges were filed within the applicable limitations period. Accordingly, we find the department has failed to demonstrate the release of report number 2008-01732 would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). In addition, report number 2008-14911 pertains to an alleged burglary of a habitation. Pursuant to section 30.02(c)(2) of the Penal Code, burglary is a felony if committed in a habitation. *See* Penal Code § 30.02(c)(2). Under article 12.01(4)(B) of the Code of Criminal Procedure, the statute of limitations for prosecution of burglary of a habitation is five years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(4)(B). More than five years have elapsed since the events giving rise to the investigation in this report. The department does not inform us any criminal charges were filed within the limitations period for this case. Thus, we find the department has failed to demonstrate release of the information pertaining to report number 2008-14911 would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Finally, report number 2008-11220 pertains to an alleged assault by contact. Pursuant to section 22.01(a)(3) of the Penal Code, assault by contact is a class C misdemeanor. *See* Penal Code § 22.01(a)(3). Under article 12.01(2)(b) of the Code of Criminal Procedure, the statute of limitations for prosecution of any class C misdemeanor is two years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(2)(b). More than two years have elapsed since the events giving rise to the investigation in this report. The department does not inform us any criminal charges were filed within the limitations period for this case. Thus, we find the department has failed to demonstrate release of the information pertaining to report number 2008-11220 would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code

§ 552.108(a)(1). Accordingly, the department may not withhold report numbers 2008-01732, 2008-11220, and 2008-14911 under section 552.108(a)(1) of the Government Code. Further, the department has not demonstrated release of report numbers 2008-01732, 2008-11220, and 2008-14911 would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold report numbers 2008-01732, 2008-11220, and 2008-14911 under section 552.108(b)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in 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.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 2011-09623 pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to report number 2011-09623.

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 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold report number 2011-09623 under section 552.108(a)(2) of the Government Code.²

As stated above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. Under the doctrine of common-law privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Thus, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold report number 2011-09623 under section 552.108(a)(2) of the Government Code. The department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/gw

Ref: ID# 774814

Enc. Submitted documents

c: Requestor
(w/o enclosures)