



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Julie Pandya Doshier
Counsel for the City of Farmers Branch
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-25472

Dear Ms. Doshier:

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# 785142 (Ref. No. 109237).

The City of Farmers Branch (the "city"), which you represent, received a request for all records pertaining to two named individuals at a specified address. You state the city is withholding certain information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code.¹ You also state the city will withhold dates of birth of public citizens pursuant to the previous determination issued in Open Records Letter No. 2017-05218 (2017).² You claim some of the submitted information is excepted from

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

²Open Records Letter No. 2017-05218 is a previous determination issued to the city authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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 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 a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, information that refers to a named individual solely as a victim, witness, or involved person is not part of a compilation of the individual’s criminal history and may not be withheld under section 552.101 on that basis.

The present request requires the city 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. Accordingly, to the extent the city maintains unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information in which neither of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of either of the individuals and may not be withheld as a compilation of criminal history. Accordingly, we will address your argument against disclosure of this information.

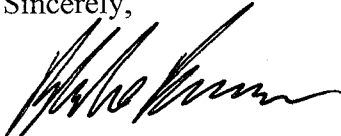
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information you marked pertains to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude the city may withhold the information you marked under section 552.108(a)(2) of the Government Code.

In summary, to the extent the city maintains unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information you marked under section 552.108(a)(2) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 785142

Enc. Submitted documents

c: Requestor
(w/o enclosures)