



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2020

Ms. Elizabeth Lara
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2020-15055

Dear Ms. Lara:

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# 831324 (PIR No. W031686).

The City of Killeen (the "city") received a request for all information pertaining to a specified incident and all reports pertaining to a named individual. 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is 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 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 requestor asks, in part, for all information held by the city concerning a named individual. Therefore, to the extent the city maintains any unspecified law enforcement information depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor also asks for information pertaining to a specific incident. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. Therefore, this information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that ground. Additionally, we note you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the individual and may not be withheld as a compilation of criminal history. Accordingly, we will address your argument to withhold this information.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 200002522 relates to an open criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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) of the Government Code is applicable to the information at issue.

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. 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). The city asserts report numbers 14014130, 20000699, 15010542, 10010177, 13001210, 12012073, and 10015218 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) of the Government Code is applicable to the information at issue.

However, we note section 552.108 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 types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information subject to section 552.130. *See* ORD 127 at 3-4. Thus, with the

exception of the basic information the city may withhold report number 200002522 under section 552.108(a)(1) of the Government Code and report numbers 14014130, 20000699, 15010542, 10010177, 13001210, 12012073, and 10015218 under section 552.108(a)(2) of the Government Code.¹

In summary, to the extent the city maintains any unspecified law enforcement information depicting the named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the city may withhold report number 200002522 under section 552.108(a)(1) of the Government Code and report numbers 14014130, 20000699, 15010542, 10010177, 13001210, 12012073, and 10015218 under section 552.108(a)(2) of the Government Code.²

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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jlbm

Ref: ID# 831324

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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

² We note the remaining information contains social security numbers. 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 under the Act. *See* Gov't Code § 552.147(b).