



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2020

Ms. Lizbeth Islas Plaster  
City Attorney  
City of Lewisville  
P.O. Box 299002  
Lewisville, Texas 75092

OR2020-25304

Dear Ms. Plaster:

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# 848137 (Ref. No. P039593-071520).

The City of Lewisville (the "city") received a request for all information pertaining to two named individuals and the requestor. You state you do not have information responsive to a portion of the request.<sup>1</sup> 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. Types of information considered

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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) (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). 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 an individual solely as a victim, witness, or involved person is not private as 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 other named individual. We find the portion of the request seeking records pertaining to the other named individual generally implicates the named individual's right to privacy. We note, however, the requestor also seeks reports involving herself. This aspect of the request seeks specified records involving the requestor, and the requestor has a right of access to private information pertaining to herself pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information relating to the requestor does not implicate the other named individual's right to privacy. The city has submitted law enforcement records that involve the requestor. This information does not consist of a compilation of the other named individual's criminal histories, and the city may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. We also note you have submitted information that does not list the other named individual as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation of the named individual and may not be withheld on that basis. Accordingly, we will address your arguments against disclosure of this information. However, to the extent the city maintains law enforcement records depicting the other named individual as a suspect, arrestee, or criminal defendant and the records do not involve the requestor, the city must withhold any such information under section 552.101 of the Government Code 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). 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 Exhibits H-1, H-2, I-1, I-2, K-1, and K-2 relate to ongoing criminal investigations. Based upon your representation and our review, we conclude the release of the submitted information 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 this information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to 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 that 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 Exhibits C, D, E, F, and G pertain to closed cases that did not result in conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

However, we note, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibits H-1, H-2, I-1, I-2, K-1, and K-2 under section 552.108(a)(1) of the Government Code, and may withhold Exhibits C, D, E, F, and G under section 552.108(a)(2) of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the other named individual as a suspect, arrestee, or criminal defendant and the records do not involve the requestor, the city 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, the city may withhold Exhibits H-1, H-2, I-1, I-2, K-1, and K-2 under section 552.108(a)(1) of the Government Code, and may withhold Exhibits C, D, E, F, and G under section 552.108(a)(2) of the Government Code.

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,

Thana Hussaini  
Assistant Attorney General  
Open Records Division

TSH/gw

Ref: ID# 848137

Enc. Submitted documents

c: Requestor  
(w/o enclosures)