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ATTORNEY GENERAL OF TEXAS

October 13, 2020

Ms. Marie N. Johnson
Counsel for the City of Denison
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2020-25583

Dear Ms. Johnson:

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# 848275 (COD ORR ID: D071020MB).

The City of Denison (the "city"), which you represent, received a request for all police reports pertaining to two named individuals at a specified address during a defined time period. You state the city will redact dates of birth pursuant to the previous determination issued in Open Records Letter No. 2018-03683 (2018).¹ You claim some of 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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

¹ Open Records Letter No. 2018-03683 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. This office has found 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). 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 city to compile unspecified law enforcement records concerning two named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Thus, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold 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 a compilation of the individual's criminal history 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 consist of a compilation of the named individuals' criminal histories, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier.² *See* Open Records Decision No. 649 (1996). You indicate the city is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You marked telephone numbers and addresses that the city seeks to withhold. We conclude the city must withhold the marked telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone numbers and addresses furnished by a 9-1-1 service supplier. If the marked information does not consist of the originating telephone numbers and addresses provided by a 9-1-1 service supplier, then the city may not withhold this information under section 552.101 in conjunction with section 772.318.

² Although the city refers to section 772.310 of the Health and Safety Code in its brief to this office, we understand the city to raise section 772.318 of the Health and Safety Code based on the substance of its argument.

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). 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 some of the information at issue pertains to an active criminal investigation or prosecution. Based on your representation and our review, we conclude release of this 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, we conclude section 552.108(a)(1) 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). Thus, with the exception of the basic information, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.³

In summary, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the telephone numbers and addresses you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone numbers and addresses furnished by a 9-1-1 service supplier. With the exception of the basic information, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. The city must release the remaining information.

Finally, you ask this office to issue a previous determination that would permit the city to withhold information subject to section 552.108(a)(2) of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Further, you ask this office to issue a previous determination that would permit it to withhold information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jm

Ref: ID# 848275

Enc. Submitted documents

c: Requestor
(w/o enclosures)