



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2022

Ms. Sally Ortiz
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2022-01151

Dear Ms. Ortiz:

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# 925360 (City Tracking No. P017855-101121).

The City of Plano (the "city") received a request for all records involving five named individuals and a specified address during a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 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 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. 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. 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.

The present request requires the city to compile unspecified law enforcement records concerning the individuals named in the request. Thus, the request implicates the named individuals' rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting any 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, however, you have submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate the individuals' rights to privacy. Accordingly, the city may not withhold this information as a compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

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.* §§ 552.108(a)(2), .301(e)(1)(A). You state Exhibits C and D pertain to criminal investigations that concluded in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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* Open Records Decision No. 127 (1976) (summarizing types of information made public by Houston Chronicle). We note basic information includes, among other things, a detailed description of the offense. *See id.* Therefore, with the exception of basic information, the city may withhold Exhibits C and D under section 552.108(a)(2) of the Government Code.¹

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find portions of the basic information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing the basic information, the city must withhold the information we have marked under section 552.101 in conjunction with

¹ As our ruling is dispositive, we do not address your remaining argument to withhold this information.

common-law privacy. However, you have failed to demonstrate any portion of the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the city maintains law enforcement records depicting any 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. With the exception of basic information, which must be released, the city may withhold Exhibits C and D under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/ba

Ref: ID# 925360

Enc. Submitted documents

c: Requestor
(w/o enclosures)