



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 12, 2022

Ms. Leslie A. Whitten  
Assistant City Attorney II  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2022-27776

Dear Ms. Whitten:

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# 971223 (ORR# A22-001283).

The City of College Station (the "city") received a request for records involving the requestor, eleven other named individuals, four specified addresses, a specified type of incident, and incidents occurring on or about fourteen different dates. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you did not submit information related to the incidents occurring on or about some of the specified dates. Thus, to the extent any information responsive to this portion of the request existed when the present request was received, we assume you have released it. If such information has not been released, then it must be released at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

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.”<sup>1</sup> 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. 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 private 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. We note the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individuals at issue other than the requestor. We find this request for unspecified law enforcement records implicates these named individuals’ right to privacy. Therefore, to the extent the city maintains unspecified law enforcement records not involving the requestor depicting the named individuals other than the requestor as suspects, arrestees, or criminal defendants, 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 in which the named individuals other than the requestor are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate these individuals’ right to privacy. Additionally, we note the requestor also seeks information pertaining to specified incidents. Because the requestor specifically asks for this information, it is not part of a compilation of the remaining individuals’ criminal histories. Thus, this information is not confidential under common-law privacy as a compilation of criminal history, and the city may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will consider your argument for this information.

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. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.*

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§§ 552.108(a)(2), .301(e)(1)(A). You assert incident report numbers 2021-002803, 2019-010868, 2019-008320, 2018-003385 relate to criminal investigations that concluded in results other than conviction or deferred adjudication. Based upon your representation, we conclude 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). Section 552.108(c) refers to the basic 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 considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the information related to incident report numbers 2021-002803, 2019-010868, 2019-008320, 2018-003385 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, to the extent the city maintains unspecified law enforcement records not involving the requestor depicting the named individuals other than the requestor as suspects, arrestees, or criminal defendants, 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 the information related to incident report numbers 2021-002803, 2019-010868, 2019-008320, 2018-003385 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,

Tim Neal  
Assistant Attorney General  
Open Records Division

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<sup>2</sup> As our ruling is dispositive, we need not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

Ref: ID# 971223

Enc. Submitted documents

c: Requestor  
(w/o enclosures)