ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2006

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2006-04340

Dear Ms. Smith:

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# 247427.

The Texas Department of Public Safety (the "department") received a request for sex offender registration documents pertaining to a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your arguments under chapter 62 of the Code of Criminal Procedure. Article 62.051(c) of the Code of Criminal Procedure requires a sex offender registrant to provide the department with certain enumerated categories of information. Article 62.005 states that this information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by the department outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See* Code of Crim. Proc. art. 62.005(b). In this instance, you have submitted sex offender registration documents which were forwarded to the department by the Dallas Police Department. However, you state that the department ultimately determined that the named individual was not subject to the sex offender registration requirement. Therefore, based on your representations, we find that the submitted information is not subject to mandatory disclosure under article 62.005 of the Code of Criminal Procedure Nevertheless, the

department may only withhold the submitted information if it is excepted from disclosure under the Act or made confidential under other law.

You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy, which protects information if it (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 demonstrated. *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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, you contend that the submitted information consists of the named individual's criminal history. We disagree. After reviewing the information, we find that it neither consists of or contains a compilation of the named individual's criminal history. We therefore determine that the submitted information is not confidential under the doctrine of common law privacy and may not be withheld under section 552.101 of the Government Code on that basis.

We note that the submitted documents do contain information that must be withheld under sections 552.101, 552.130, and 552.147 of the Government Code. Section 552.101 also encompasses chapter 560 of the Government Code. Fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code, which provide:

> Sec. 560.001. DEFINITIONS. In this chapter
>
> > (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
> >
> > (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.
>
> Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

> (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
>
> > (A) the individual consents to the disclosure;
> >
> > (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
> >
> > (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
>
> (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.
>
> Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. Thus, pursuant to section 552.101 and section 560.003, the department must withhold the fingerprint information we have marked unless section 560.002 permits its disclosure.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. We note that this provision does not protect out-of-state motor vehicle record information. Therefore, in accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security number contained in the submitted information under section 552.147.[1]

In summary, the department must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the

---

[1]We note that 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.

Government Code. The department must also withhold the information we have marked under sections 552.130 and 552.147 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 247427

Enc. Submitted documents

c: Ms. Aglaia D. Mauzy
Dixie & Mauzy, L.L.P.
2301 Cedar Springs, Suite 300
Dallas, Texas 75202
(w/o enclosures)