



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2006

Ms. Nicole B. Webster  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2006-14276

Dear Ms. Webster:

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# 266051.

The Waco Police Department (the "department") received a request for all information related to two named individuals and information related to a particular address. You state that you are withholding the social security numbers contained in the responsive information under section 552.147 of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted information to this office that is responsive to the portion of the request related to the two named individuals. You have not submitted information responsive to the request as it relates to the particular address. Thus, to the extent that it exists, we assume that you have released any such information. If you have not released any such information to the requestor, then you must do so now. *See Gov't Code §§ 552.021, .221, .301, .302.*

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<sup>1</sup>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.

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 if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).<sup>2</sup> 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. 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. Here, because the requestor asks for unspecified arrest records involving a named individuals, the request implicates those individuals’ right to privacy. Therefore, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, that driving record information is generally not considered criminal history. *See generally* Gov’t Code 411.082(2)(B).

You have submitted to this office two documents in which you assert the marked information is excepted from public disclosure under section 552.130, which provides in part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state;
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body but will not ordinarily raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.130. In this instance you have submitted and marked under section 552.130 two operator license numbers for one individual, an FBI number, and an unidentified state identification number. We find that you have not demonstrated that the FBI number and state identification number you have highlighted are protected under section 552.130. *See id.* § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Therefore, these numbers may not be withheld under section 552.130. Further you may only withhold the marked operator license numbers to the extent that they constitute Texas driver's license numbers. You must withhold the marked Texas license plate numbers under section 552.130.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. To the extent that the marked numbers constitute Texas driver's license numbers, they must be withheld under section 552.130, along with the marked Texas license plate numbers. The remaining information must be released.

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).

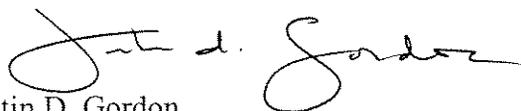
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 266051

Enc. Submitted documents

c: Ms. Jackie Eure  
2497 CR 3550  
Valley Mills, Texas 76689  
(w/o enclosures)