



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Ms. Susan Durso
General Counsel
Texas Residential Construction Commission
P.O. Box 13509
Austin, Texas 78711-3509

OR2009-02749

Dear Ms. Durso:

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# 336043 (TRCC PIR #2363).

The Texas Residential Construction Commission (the "commission") received a request for all records, including complaints, pertaining to a named home builder. You state that you will release a portion of the requested information to the requestor. You also state that the requestor clarified his request allowing the commission to redact information subject to sections 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the

¹See Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request). Accordingly, any such information is not responsive to the request and need not be released to the requestor.

Government Code.² We have considered the exception you claim and reviewed the submitted information.

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. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See 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 met. *Id.* at 681-87.

The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Furthermore, 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 privacy 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). This office has found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we agree that some of the information you seek to withhold is protected by common-law privacy; therefore, we have marked the information that the commission must withhold under section 552.101 of the Government Code on that basis. We find, however, that the remaining information you seek to withhold under this exception is not intimate or embarrassing or there is a legitimate public interest in the information. Therefore, none of the remaining information is confidential under common-law privacy, and the commission may not withhold it under section 552.101 of the Government Code on that basis. As you

²Although you also raise section 552.101 in conjunction with the attorney-client privilege under Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. We also note that although you also claim rule 503 of the Texas Rules of Evidence and Texas Rule of Civil Procedure 192.5, you make no arguments to support these privileges. Therefore, we assume you have withdrawn your claims that these privileges apply to the submitted information.

raise no other exception to disclosure, the remaining information must be released to the requestor.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 336043

Enc. Submitted documents

cc: Requestor
(w/o enclosures)