



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 9, 2009

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

OR2009-03068

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# 336945 (PIR# 2384).

The Texas Residential Construction Commission (the "commission") received a request for any records pertaining to a named individual. You state that you have released a portion of the requested information to the requestor. You also state that the requestor clarified her request allowing the commission to redact information subject to sections 552.130, 552.136, 552.137, and 552.147 of the Government Code. You claim that the submitted 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 note that some of the submitted information, which we have marked, is not responsive to the request for information, because the requestor modified her request to exclude information subject to section 552.147 of the Government Code. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, 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,

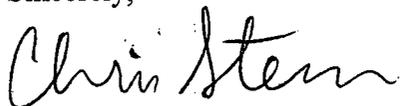
psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure 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. Thus, 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. 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/egg

Ref: ID# 336945

Enc. Submitted documents

c: Requestor
(w/o enclosures)