



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
Attorney for City of McKinney
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-09074

Dear Mr. Griffith:

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# 349450.

The McKinney Police Department (the "department"), which you represent, received a request for all information regarding a named individual at a particular address from 2005 through April 29, 2009. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it occurred outside the specified time period. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Next, we note the remaining information contains a CR-3 report that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation

or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has not provided the department with two of the required pieces of information. Thus, the department must withhold the marked CR-3 accident report from the requestor under section 550.065(b) of the Transportation Code. We note, should the requestor provide the department with the requisite information pursuant to section 550.065(c)(4), the department must release the submitted accident form in its entirety.

Section 552.101 of the Government Code exempts 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 that (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 met. *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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department to compile unspecified criminal history records concerning the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold these records under section 552.101 in conjunction with common-law privacy. As our ruling is dispositive, we do not address your remaining argument against disclosure.

In summary, the department must withhold the marked CR-3 accident report under section 550.065(b) of the Transportation Code. To the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold these records under section 552.101 in conjunction with common-law privacy.

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,

A handwritten signature in black ink, appearing to read 'E. Sitton', with a stylized flourish at the end.

Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 349450

Enc. Submitted documents

c: Requestor
(w/o enclosures)