



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2009-11350

Dear Mr. Hawk:

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# 352119 (Request No. 2009-3607).

The Dallas Police Department (the "department") received a request for reports pertaining to the requestor's stolen motorcycle on a specific date. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Although you state release of the submitted information would hinder the Collin County District Attorney's Office ("district attorney") in its efforts to prosecute the

matter, you have not provided a representation from the district attorney that it asserts an interest in the submitted information and wants it to be withheld under section 552.108. Accordingly, the department may not withhold the submitted information under section 552.108 of the Government Code. However, section 552.101¹ and section 552.130 can provide compelling reasons to overcome the presumption of openness. Accordingly, we will consider whether the submitted information is excepted from disclosure under these exceptions.

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 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 satisfied. *Id.* at 681-82. This office has found that 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, a portion of the submitted information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 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." Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, pursuant to section 552.130 of the Government Code. It appears, however, that the requestor may be the owner of one of the vehicles at issue. Section 552.130 protects privacy interests, and the person to whom such information relates has a right of access to such information under section 552.023 of the Government Code.² Thus, the department must release the information we have marked

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

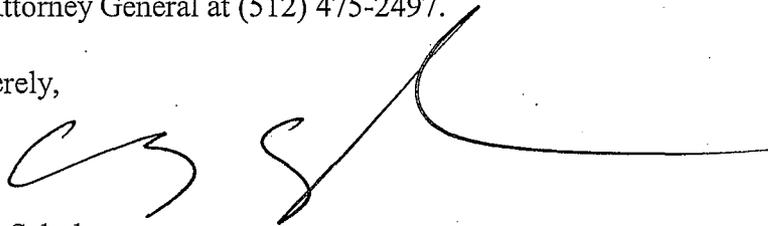
under section 552.130 if it pertains to a vehicle the requestor owns. To the extent the requestor does not have a right of access to the marked information, the department must withhold it under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. However, the department must release the information we have marked under section 552.130 if it pertains to a vehicle the requestor owns. The remaining information must be released.³

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 352119

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³ We note the remaining information contains a social security number. 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. Gov't Code § 552.147(b).