



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2009

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2009-12077

Dear Mr. Alicie:

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# 353619.

The Baytown Police Department (the "department") received a request for report number 2008-52044 and any other reports that involve the suspect from report number 2008-52044 as a suspect. You indicate that the department has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You state the department has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540

¹We note that 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.

S.W.2d 668, 683-85 (Tex. 1976). The type of information considered intimate or 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. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that records relating to routine traffic violations are not considered criminal history information. Cf. Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information).

A portion of the present request requires the department to compile unspecified law enforcement records concerning the specified individual. We find the request for unspecified law enforcement records implicates the specified individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the specified individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor also seeks a specified incident report, report number 2008-52044. This report does not constitute compiled criminal history protected by common-law privacy and may not be withheld on that basis under section 552.101.

You state that the information you have highlighted in yellow, within report number 2008-52044, is highly intimate or embarrassing and not of legitimate public concern. Based on your representation and our review of report number 2008-52044, we agree the department must withhold the yellow-highlighted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.130 of the Government Code for the information you have highlighted in pink. 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." *Id.* § 552.130. The department must withhold the pink-highlighted information, as well as the information we have marked, pursuant to section 552.130.

In summary, to the extent the department maintains law enforcement records depicting the specified individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the yellow-highlighted information under section 552.101 in conjunction with common-law privacy. The department must also withhold the pink-highlighted information, as well as the information we have marked, under section 552.130 of the Government Code. The remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 353619

Enc. Submitted documents

c: Requestor
(w/o enclosures)