



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2009

Ms. Courtney Alvarez  
City Attorney  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

OR2009-12770

Dear Ms. Alvarez:

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# 355933.

The City of Kingsville (the "city") received a request for a specific police report involving a named individual and information indicating any other arrests or charges against that individual for the two years prior to the request. You state the city released the specific report. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information

requested, the copy of the comments provided to the person must be a redacted copy.

Act of May 17, 1993, 73rd Leg., R.S., ch. 268, § 1, sec. 552.301(e-1), 1993 Tex. Gen. Laws 583, 605, *amended by* Act of June 3, 2009, 81st leg., R.S., ch. 1377, § 8, 2009 Tex. Sess. Law Serv. 4324, 4326 (Vernon). While the city sent the requestor a copy of its written comments submitted to this office pursuant to section 552.301(e)(1)(A), the city redacted most of its discussion of the asserted exceptions from this copy. After review of the redacted portion of the city's brief, we conclude that the city redacted information from the requestor's copy that does not disclose or contain the substance of the information requested. Therefore, we conclude that the city failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). You raise section 552.108 of the Government Code. 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 No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the city has waived its claim under section 552.108. Therefore, the city may not withhold any of the requested information under section 552.108 of the Government Code. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider the city's claims 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. This section encompasses the common-law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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 681-82. 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 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 record information. *Cf.* Gov't Code § 442.082(2)(B) (criminal history record information does not include driving record information).

In this case, the requestor asks for "anything else" that indicates the individual was arrested or charged within the past two years. This request requires the city to compile unspecified law enforcement records concerning the named individual. Thus, we find that this request implicates this individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> We note, however, that report no. 06-005029 relates to a routine traffic violation and does not implicate the named individual's privacy under section 552.101 of the Government Code; therefore it may not be withheld on this basis.

You seek to withhold Texas motor vehicle record information under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked under section 552.130 from report no. 06-005029; the remainder of this report 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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/eeg

Ref: ID# 355933

Enc. Submitted documents

c: Requestor  
(w/o enclosures)