ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Ms. Natasha Brooks
Assistant City Attorney
Office of the City Attorney
P.O. Box 1152
Midland, Texas 79702

OR2009-14034

Dear Ms. Brooks:

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# 357462.

The Midland Police Department (the "department") received a request for records involving family or domestic violence pertaining to a named individual during a specified period. You claim the requested records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We marked some of the submitted records which are not responsive to the instant request. 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 these records in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd).

Section 552.101 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 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. 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.

You claim the request for information requires the department to compile unspecified law enforcement records, thus implicating the privacy of the named individual. Upon review, however, we determine that the responsive records do not list the named individual as a suspect, arrestee, or criminal defendant. Therefore, the responsive records are not a compilation of the named individual's criminal history, and may not be withheld under section 552.101 in conjunction with common-law privacy.

However, the responsive records contain information that may be subject to section 552.130 of the Government Code.[1] Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The responsive records contain Texas driver's license numbers. Because section 552.130 is based on privacy principles, an attorney has a right to his client's driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). It is unclear from the request whether the requestor is an attorney who represents the named individual. If the requestor is the named individual's attorney, his client's Texas driver's license number must be released. If the requestor does not represent the named individual, this number must be withheld under section 552.130 of the Government Code. We have also marked the Texas driver's license number of another individual, which must be withheld under section 552.130. The remaining responsive 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.

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

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

Sincerely,

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 357462

Enc. Submitted documents

cc: Requestor
(w/o enclosures)