



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
Civic Center Plaza 9th Floor
El Paso, Texas 79901

OR2009-15622

Dear Ms. Sandoval-Walker:

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# 360408.

The El Paso Police Department (the "department") received two requests from the same requestor for information relating to a named individual, including records of all incidents involving the individual during a specified time interval and information concerning a specified incident. You state that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. You raise section 552.101 in conjunction with 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 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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. United States 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). We also find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

One of the instant requests is for records of "all incidents" involving the named individual. This request for unspecified law enforcement records requires the department to compile the named individual's criminal history and thereby implicates her privacy interests. Therefore, to the extent that the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 in conjunction with common-law privacy.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (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). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information relating to the incident specified by the requestor that is intimate or embarrassing and not a matter of legitimate public interest. The department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

We note that section 552.130 of the Government Code is applicable to some of the remaining information.¹ This section excepts from disclosure information relating 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). We have marked Texas driver's license and motor vehicle information that the department must withhold under section 552.130.

In summary: (1) any information maintained by the department that depicts the named individual as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the marked information relating to the named individual must be withheld under section 552.101 in conjunction with common-law privacy; and (3) the marked Texas driver's license and

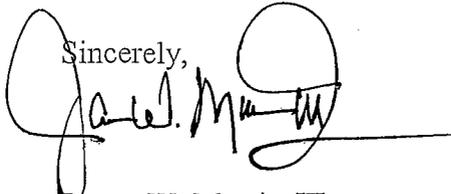
¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

motor vehicle information must be withheld under section 552.130 of the Government Code.² The rest of the submitted 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 360408

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²We note that the remaining information includes social security numbers. 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.