



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 23, 2009

Mr. Art Pertile, III  
Olson & Olson L.L.P.  
Wortham Tower Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2009-16681

Dear Mr. Pertile:

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# 367112.

The City of Stafford (the "city"), which you represent, received a request for information relating to a named individual. You claim that some of the requested information is excepted from disclosure under section 552.130 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."<sup>1</sup> Gov't Code § 552.101. This exception 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 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.

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<sup>1</sup>Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

In this instance, the requestor seeks access to unspecified law enforcement records involving a named individual. Thus, this request requires the city to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent that the city maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that the city must withhold under section 552.130.

In summary: (1) any information maintained by the city that depicts the named individual as a suspect, arrested person, or criminal defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the marked Texas driver's license information must be withheld under section 552.130 of the Government Code.<sup>2</sup> 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](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,



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

JWM/cc

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<sup>2</sup>We 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.

Ref: ID# 367112

Enc: Submitted documents

c: Requestor  
(w/o enclosures)