



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

Ms. Cynthia de Roch
General Counsel
Texas Residential Construction Commission
P.O. Box 13509
Austin, Texas 78711-3509

OR2009-17382

Dear Ms. De Roch:

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# 363780 (PIR# 3045).

The Texas Residential Construction Commission (the "commission") received a request for all information pertaining to a specified company and a named individual. You state that the commission has provided the requestor with some of the requested information. You also state that the commission has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 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 common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision*

¹Section 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.

Nos. Nos. 600 (1992), 545 (1990). 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, 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* § 411.082(2)(B) (criminal history record information does not include driving record information).

Upon review, we agree that portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked is either not highly intimate or embarrassing, or it is of legitimate public interest. Therefore, the commission may not withhold any of the remaining information you have marked on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from public 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. *See id.* § 552.130 (a)(1)-(2). We note, however, this provision only applies to motor vehicle record information issued by the State of Texas, and not other states. Therefore, the commission must only withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). Upon review, we determine that the commission must withhold the information we have marked under section 552.136 of the Government Code. However, the remaining information you have marked does not constitute a credit card, debit card, charge card, or access device number for purposes of section 552.136, and it may not be withheld on that basis.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(b). The e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c). *See Gov't Code* § 552.137(c). Therefore the commission must withhold the e-mail addresses you have

marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses at issue consent to their release.

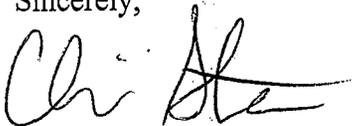
We note that some of the remaining information at issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, (1) the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the commission must withhold the information we have marked under section 552.130 of the Government Code; (3) the commission must withhold the information we have marked under section 552.136 of the Government Code; and (4) the commission must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses at issue consent to their release. The commission must release the remaining information, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 363780

Enc. Submitted documents

c: Requestor
(w/o enclosures)