



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2011

Ms. Martha T. Williams
Olson & Olson L.L.P.
Wortham Tower Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2011-01165

Dear Ms. Williams:

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# 411138.

The City of Friendswood (the "city"), which you represent, received three requests from the same requestor for information involving a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note some of the submitted information does not fall within the time intervals specified by the requestor and thus is not responsive to his requests for information. This decision does not address the public availability of that information, which we have marked, and the city need not release that information in response to these requests.

We next note the city did not comply with section 552.301 of the Government Code in claiming section 552.108 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). In this instance, the

city received three requests for the same information. Although the city timely claimed section 552.108 in requesting a decision with respect to the second and third requests, the city did not claim section 552.108 in requesting a decision with respect to the first request. In failing to claim section 552.108 with respect to the first request, the city did not comply with section 552.301(b). We note 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, the city's claim under section 552.108 does not constitute a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code. We note the city also claims section 552.101 of the Government Code. As the applicability of that exception can provide a compelling reason for non-disclosure, we will address section 552.101.

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 exception encompasses the doctrine of common-law 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 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to unspecified police records regarding the named individual. Thus, these requests require the city to compile the named individual's criminal history and thereby implicate her privacy interests. Therefore, to the extent the city maintains law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common law privacy.

Although you have submitted responsive information that is not protected by common-law privacy under section 552.101, we note the information in question includes a Texas driver's

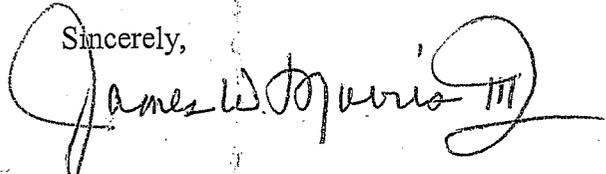
license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.¹ See Gov't Code § 552.130(a)(1). The city must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.²

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 under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the Texas driver's license number we have marked must be withheld under section 552.130 of the Government Code.³ The city must release the rest of the responsive information.

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,



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

JWM/em

¹This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130.

³We note the submitted information also includes a social security number. 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# 411138

Enc: Submitted documents

c: Requestor
(w/o enclosures)