



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2011

Ms. Cecilia Gamez
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2011-02101

Dear Ms. Gamez:

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# 412728.

The McAllen Police Department (the "department") received a request for a named individual's "complete criminal history." You claim the requested 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. 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. *See 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. We note information relating to routine traffic violations does not implicate privacy concerns. *Cf.* Gov't Code § 411.081(b).

This request for the named individual's "complete criminal history" requires the department to compile the individual's criminal history and thereby implicates her privacy interests. Therefore, the department would ordinarily be required to withhold any information it maintains that depicts the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the requestor identifies herself as the individual's authorized representative. As such, the requestor has a special right of access under section 552.023 of the Government Code to any information the department would otherwise be required to withhold to protect the individual's privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).¹ Therefore, the department may not withhold any such information from this requestor under section 552.101 in conjunction with common-law privacy. As the department claims no other exception to disclosure, any such information must be released.²

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.

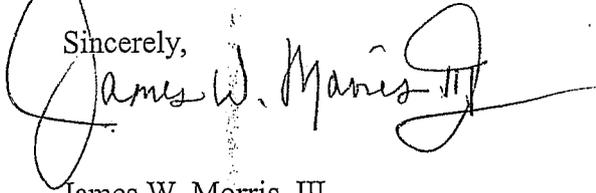
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

²We note the department has submitted information that contains the named individual's Texas driver's license number, which the department would ordinarily be required to withhold under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor also has a right of access under section 552.023 to the individual's Texas driver's license number. Should the department receive another request for this information from a person who would not have a right of access to the individual's private information, the department should resubmit this information and request another decision. *See* Gov't Code §§ 552.301(a), 302.

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 that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and "M".

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

JWM/em

Ref: ID# 412728

Enc: Submitted documents

c: Requestor
(w/o enclosures)