



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2011

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-04366

Dear Mr. Smith:

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# 413047 (Richardson No. 11-014).

The Richardson Police Department (the "department") received a request for any information pertaining to the requestor and another named individual for a specified time period. You state the department has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state you have redacted portions of information from Exhibit B under section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). However, we note the vehicle identification number you have redacted is not subject to Open Records Decision No. 684 and may not be redacted without requesting an attorney general decision. Upon review, we find the department must withhold the vehicle identification

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

number we have marked in Exhibit B under section 552.130. Furthermore, we note one of the driver's license numbers you have marked belongs to the requestor. Section 552.130 is based on privacy principles. Therefore, the requestor has a right of access to his own driver's license number under section 552.023 of the Government Code and the department may not withhold this information from this requestor on this basis. *See Gov't Code § 552.023(a)-(b)* (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

You also state you have redacted social security numbers from Exhibit B pursuant to section 552.147 of the Government Code. Section 552.147(b) 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. However, we note that one of the social security numbers you have marked belongs to the requestor. Section 552.147 protects personal privacy. As noted above, the requestor has a right of access to his own information that would otherwise be confidential under privacy principles; therefore, the department may not withhold the requestor's social security number from him on this basis. *See Gov't Code § 552.023(a)-(b); ORD 481 at 4.*

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this 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. U.S. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information). Furthermore, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

You contend and we agree the present request requires the department to compile unspecified law enforcement records concerning the named individual who is not the requestor, thus implicating the named individual's right to privacy. Therefore, to the extent the department

maintains law enforcement records depicting the named individual who is not the requestor as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted citations pertaining to routine traffic violations. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments against the disclosure of this information.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted traffic citations pertain to criminal cases that concluded in results other than convictions or deferred adjudications. Thus, we agree that section 552.108(a)(2) is applicable to the submitted traffic citations, and they may be withheld on that basis.²

In summary: (1) the department must withhold the vehicle identification number we have marked in Exhibit B under section 552.130 of the Government Code; (2) to the extent the department maintains information depicting the named individual who is not the requestor as a suspect, defendant, or arrestee in criminal matters that are not traffic violations, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the department may withhold the traffic citations in Exhibit C under section 552.108(a)(2) of the Government Code. The department must release the remaining information.³

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.

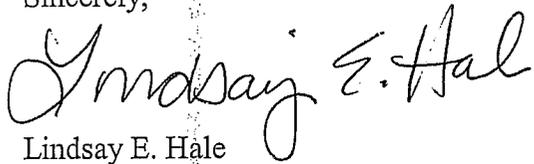
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at

²As our ruling is dispositive, we need not address your remaining argument under section 552.130 of the Government Code.

³Because this requestor has a special right of access to some of the information being released under section 552.023 of the Government Code, if the department receives another request for the same information from an individual other than this requestor, the department must again seek a ruling from this office.

(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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 413047

Enc. Submitted documents

c: Requestor
(w/o enclosures)