



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 10, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-06461

Dear Ms. Sangsvang:

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# 417036 (PIR No. W006944).

The City of Fort Worth (the "city") received a request for arrest records for a named individual from two specified dates and for the years of 2004 and 2006. You indicate you have redacted Texas driver's license numbers under section 552.130 of the Government Code pursuant to a previous determination issued to the city in Open Records Letter No. 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also indicate you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.151 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. *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 satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is

¹Section 552.147(b) of the Government Code authorizes a government 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. Gov't Code § 552.147(b).

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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the individual named in the request from the years of 2004 or 2006. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant from the years of 2004 or 2006, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

However, you have submitted information pertaining to incidents that occurred on specified dates. Because the requestor specifically requests these arrest reports, they are not part of a compilation of the named individual's criminal history that implicates the person's privacy. Therefore, we will address your arguments against disclosure for the specified arrest reports.

This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the city must withhold the information you have marked in arrest report 09-81360 under section 552.101 in conjunction with common-law privacy.

Section 552.151 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You represent to this office that the release of the name and identification number of the undercover officer in arrest report 09-81360 would cause the officer to face a substantial threat of physical harm. Based on your representation, we find that the city has demonstrated that release of the information you have marked in arrest report 09-81360 would subject the officer to a substantial threat of physical harm. Therefore, the

city must withhold the name and identification number of the undercover officer you have marked in arrest report 09-81360 under section 552.151 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant from the years of 2004 or 2006, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked in arrest report 09-81360 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the name and identification number of the undercover officer you have marked in arrest report 09-81360 under section 552.151 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 417036

Enc. Submitted documents

c: Requestor
(w/o enclosures)