



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2011

Mr. B. Chase Griffith
For City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-08120

Dear Mr. Griffith:

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# 419836 (OR# 10-3555).

The McKinney Police Department (the "department"), which you represent, received two requests from the same requestor for all records pertaining to a named individual, as well as information related to a specified incident. You claim that the submitted 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 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 exception 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 demonstrated. *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) (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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private

because it is not criminal history information, and therefore, may not be withheld under section 552.101 on that basis.

In this instance, the requestor seeks, in part, all reports pertaining to a named individual. This portion of the request requires the department to compile unspecified records concerning the individual at issue. We find this request for unspecified law enforcement records implicates this individual's right to privacy. Therefore, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, the requestor also seeks information related to a specified incident report. This information does not consist of a compilation of the named individual's criminal history and therefore does not implicate his privacy interests. Accordingly, the department may not withhold report number 07-050552 under section 552.101 of the Government Code on that basis.

We note that common-law privacy also protects other types of information. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See Indus. Found.* 540 S.W.2d at 683. Upon review, we find a portion of report number 07-050552 to be highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information to be highly intimate or embarrassing and not of legitimate public interest. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from 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."² Gov't Code § 552.130(a). The department must, therefore, withhold the Texas motor vehicle record information we have marked in Exhibit 2 under section 552.130 of the Government Code.³

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

In summary, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked in report number 07-050552 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁴

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,



Vanessa Burgess .
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 419836

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains social security numbers. 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. Gov't Code § 552.147(b).