ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2012

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2012-00643

Dear Ms. Camp-Lee:

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# 442261.

The Round Rock Police Department (the "department"), which you represent, received a request for information pertaining to (1) a specified address involving two named individuals and five listed offenses for a specified time period and (2) a different specified address involving three listed offenses. We note you have redacted some driver's license numbers from the submitted information under section 552.130 of the Government Code.[1] We also note you have redacted some social security numbers pursuant to section 552.147(b) of the Government Code.[2] 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.

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[1]On September 1, 2011, the Texas legislature amended section 552.130 of the Government Code to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), including driver's license numbers, without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

[2]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. Gov't Code § 552.147(b).

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 section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. 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 id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). In addition, 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we agree that a portion of the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Accordingly, with the exception of the information we marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate interest to the public. Therefore, no portion of the remaining information may be withheld under section 552.101 under common-law privacy.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A);

see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B relates to pending criminal investigations. Thus, based on your representation, we conclude release of Exhibit B would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable to Exhibit B. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 177; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of the information we marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which you state you have released, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released.[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,

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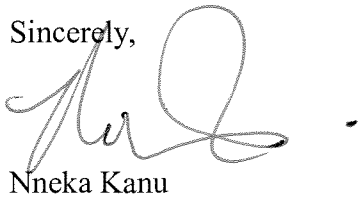
[3]We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 442261

Enc. Submitted documents

cc: Requestor
(w/o enclosures)