



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2013

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2013-08117

Dear Mr. Ohnemiller:

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# 487921 (Midland Request ID# 11992).

The City of Midland (the "city") received a request for reports relating to two specified incidents, including police report number 120718036, and any other reports made on a named individual during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 (1) containing 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 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all reports pertaining to a named individual. This aspect of the request requires the city to compile the named individual's criminal history and implicates the privacy of the named individual. Therefore, to the extent the city maintains law enforcement records, other than information pertaining to the specified incidents, listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted documents relating to the incidents specified by the requestor. This information is not part of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the city must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records, other than information pertaining to the specified incidents, listing the named individual as a suspect, arrestee, or criminal defendant, 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 driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released.¹

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,

¹We note some of the information being released in this instance contains the requestor's driver's license information, which is generally confidential under section 552.130(a)(1) of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a special right of access to her information under section 552.023 of the Government Code. *See generally* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles). We note section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) and (a)(3) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c). *But see id.* § 552.130(d)-(e). Thus, if the city receives another request for this information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the requestor's driver's license.

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,

A handwritten signature in black ink, appearing to read 'DLW', with a long horizontal flourish extending to the right.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 487921

Enc. Submitted documents

c: Requestor
(w/o enclosures)