



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2013

Ms. Yolanda Saddler
Administrative Assistant
Custodian of Records
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2013-10294

Dear Ms. Saddler:

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# 490720.

The Sweetwater Police Department (the "department") received a request for all information pertaining to the requestor and/or her spouse from January 2000 to the date of the request. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Section 552.101 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

¹Although you cite section 552.305 of the Government Code, we understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy based on the substance of your arguments and your markings.

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). 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, requires the department to compile unspecified law enforcement records concerning the requestor's spouse. We find this request for unspecified law enforcement records implicates the individual at issue's right to privacy. Accordingly, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy.

However, because the individual at issue is the requestor's spouse, the requestor may be acting as the authorized representative of this individual. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Accordingly, if the requestor is not acting as her spouse's authorized representative, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as her spouse's authorized representative, she has a special right of access to the compilation of her spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 in conjunction with common-law privacy. In that instance, we will address your arguments against disclosure for any such information.

Further, we note you have submitted records that do not list the requestor's spouse as a suspect, arrestee, or criminal defendant. This information does not implicate his privacy interest and may not be withheld as a compilation of his criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, we will address your arguments against the disclosure for this information.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Common-law privacy also protects the types of information considered intimate or embarrassing by the Texas Supreme Court, which includes 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. *Indus. Found.*, 540 S.W.2d at 683. We note the dates of birth of living members of the public are not excepted

from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find the department has failed to demonstrate any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not acting as her spouse's authorized representative, to the extent the department maintains law enforcement records depicting the individual at issue 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. If the requestor is acting as her spouse's authorized representative, that information, to the extent it exists, must be released to her. In either event, the department must release the requested information that does not list the requestor's spouse as a suspect, arrestee, or criminal defendant.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 490720

Enc. Submitted documents

c: Requestor
(w/o enclosures)