



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2013

Ms. Donna L. Johnson
Counsel for the City of Spring Valley Village
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2013-13674

Dear Ms. Johnson:

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# 495695 (Ref: SVV13-005).

The Spring Valley Village Police Department (the "department"), which you represent, received a request for any records for a specified case. You inform us the department has released most of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.130 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

No. 545 (1990). This office has also found common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. 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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov't Code § 552.1175). Section 552.1175 is applicable to information related to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a)(1). We note section 552.1175 encompasses a cellular telephone or pager number if the cellular telephone or pager service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Upon review, we have marked a cellular telephone number and a pager number the department must withhold under section 552.1175 of the Government Code to the extent the peace officer whose numbers are at issue elects to restrict access to these numbers in accordance with section 552.1175(b) and the cellular telephone and pager service is not paid for by a governmental body.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). You seek to withhold the information you have highlighted under section 552.130. Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code. However, the remaining information you have highlighted is not subject to section 552.130. Thus, the department may not withhold this information on that basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the cellular telephone number and pager number we have marked under section 552.1175 of the Government Code if the peace officer whose numbers are at issue elects to restrict access to these numbers in accordance with section 552.1175(b) of the Government Code and the cellular telephone and pager service is not paid for by a governmental body. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 495695

Enc. Submitted documents

c: Requestor
(w/o enclosures)