



January 20, 2015

Mr. Jaime J. Muñoz
Attorney for the City of San Juan
P.O. Box 47
San Juan, Texas 78589

OR2015-01056

Dear Mr. Muñoz:

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# 550595.

The San Juan Police Department (the "department"), which you represent, received a request for all offense reports and narratives involving three named individuals and a specified case narrative. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the procedural obligations of the department under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the department received the instant request for information on October 13, 2014. Accordingly, you were required to submit a request for

a ruling from this office by October 27, 2014, and submit the information required by section 552.301(e) by November 3, 2014. You sent the request for a ruling and the information required by section 552.301(e) to this office by electronic submission pursuant to section 552.309 of the Government Code. *See id.* § 552.309(a); 1 T.A.C. § 63.22(a). However, you submitted this information by electronic submission on November 6, 2014. *See Gov't Code* § 552.309(a) (requirement to submit a document within a specified period under the Act is met in a timely fashion if it is submitted through the attorney general's designated electronic filing system within that period); 1 T.A.C. § 63.22(b) (government body's request for decision submitted electronically must comply with section 552.301 of the Government Code). Therefore, we find the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See Gov't Code* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, section 552.108 is a discretionary exception that protects only a governmental body's interests; as such, it may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108. We note portions of the submitted information are subject to sections 552.101 and 552.130 of the Government Code.¹ Because these exceptions make information confidential under the Act, we will address their applicability to 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 section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate

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 No. 481 (1987), 480 (1987), 470 (1987).

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. This office has found 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. United States 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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request, in part, seeks all reports pertaining to three named individuals. This aspect of the request requires the department to compile the criminal history of each named individual and implicates the privacy of the named individuals. Therefore, to the extent the department maintains law enforcement records, other than information pertaining to the specified incident, listing any of the named individuals 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.

We note the department has submitted documents relating to the incident specified by the requestor. Further, the department has submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of any individual's criminal history, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of section 552.130 of the Government Code to this information.

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

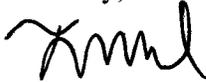
In summary, to the extent the department maintains law enforcement records, other than information pertaining to the specified incident, listing any of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under

section 552.130 of the Government Code. The department must release the remaining information.²

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 550595

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains a social security number. 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. See Gov't Code § 552.147(b).