



February 13, 2015

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2015-02911

Dear Ms. Armstrong:

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# 556078 (ORR# 2014-14491).

The Dallas Police Department (the "department") received a request for information pertaining to a specified investigation file.<sup>1</sup> The department claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-21642 (2014). We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the

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<sup>1</sup>As the department has not submitted a copy of the request for information, we take our description from the department's brief.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

current request is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2014-21642 as a previous determination and withhold or release the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2014-21642, we will address your arguments against disclosure.

We must next address the procedural obligations of the department under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(B). The department informs us it received the request for information on December 15, 2014. However, as of the date of this ruling, the department has not submitted a copy of the request to this office. Therefore, the department failed to comply with section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the submitted information under section 552.108. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption.<sup>3</sup> Therefore, we will consider whether these sections require the department to withhold 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

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

protects information that (1) contains highly intimate or embarrassing fact, 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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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). The requestor has a right of access to the requestor's own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). However, the department must withhold the audible license

plate number in the recording labeled "Track01.cda" and the information we have marked under section 552.130 of the Government Code.

Finally, we note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2014-21642 as a previous determination and withhold or release the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2014-21642, the department must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the audible license plate number in the recording labeled "Track01.cda" and the information we have marked under section 552.130 of the Government Code; and (3) release the remaining information, but may only release any copyrighted information in accordance with copyright law.<sup>4</sup>

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.

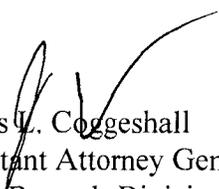
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>4</sup>We note the information being released contains motor vehicle record information to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code §§ 552.023, .130; ORD 481 at 4. Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. 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). Thus, if the department receives another request for this same information from a person who does not have such a right of access, the department may redact the requestor's driver's license information pursuant to section 552.130(c) without requesting a decision under the Act. We also note the submitted information contains social security numbers. 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 under the Act. Gov't Code § 552.147(b).

[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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 556078

Enc. Submitted documents

c: Requestor  
(w/o enclosures)