



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2015

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-04222

Dear Ms. Brown:

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# 556177 (Plano tracking no. CYRR121114).

The Plano Police Department (the "department") received a request for information regarding the requestor's son during a specified time period.¹ You state the department has released some responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.² We have considered the exceptions 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."

¹We note the department sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²Although you do not raise sections 552.130 and 552.147 in your brief, we understand you to raise these exceptions based upon your markings.

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 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.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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. 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. We also note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information).

The present request requires the department to compile unspecified law enforcement records concerning the named individual. Accordingly, we find the request implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual 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 you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation, and therefore may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

You assert the records at issue contain information subject to common-law privacy. This office has concluded some kinds of medical information are highly intimate or embarrassing and not of legitimate public concern. *See Open Records Decision No. 455* (1987). Upon review, we find some of the information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, 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 has not demonstrated that any of the remaining

information is confidential under common-law privacy; therefore, it may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

You claim the remaining information is protected under constitutional privacy. Upon review, we find the department has not demonstrated constitutional privacy applies to the information at issue. Consequently, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986).

We understand the information you have marked under section 552.108 relates to concluded investigations which you state did not result in conviction or deferred adjudication. Based on your representation and our review, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the department must withhold the information you have marked under section 552.130 of the Government Code. We have marked some additional information the department must withhold under section 552.130.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the department may

withhold the social security number you have marked under section 552.147 of the Government Code.

In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual 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 as a criminal history compilation. 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 may withhold the information you marked under section 552.108(a)(2) of the Government Code. The department must withhold the information you marked, and the additional information we have marked, under section 552.130 of the Government Code. The department may withhold the marked social security number under section 552.147 of the Government Code. The remaining information must be released.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 556177

Enc. Submitted documents

c: Requestor
(w/o enclosures)