



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 23, 2015

Mr. Daniel Ortiz  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2015-07860

Dear Mr. Ortiz:

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# 560802 (Ref. No. 15-1026-5136).

The El Paso Police Department (the "department") received a request for any and all offense and incident reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the department previously received a request for any and all incident reports pertaining to the named individual, as a result of which this office issued Open Records Letter No. 2015-01122 (2015). In that previous ruling, we concluded the department: (1) must withhold any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, to the extent the department maintained such information, under section 552.101 of the Government Code in conjunction with common-law privacy, (2) must withhold certain information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, (3) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, (4) with the exception of basic information, may withhold certain information under section 552.108(a)(2) of the Government Code, (5) must withhold certain information under section 552.130 of the Government Code, and (6) must release the

remaining information. We note the current requestor has included a medical release form signed by the named individual. Accordingly, the current requestor may be the named individual's authorized representative. If the current requestor is the named individual's authorized representative, then she would have a right of access to information related to this individual which was previously withheld in Open Records Letter No. 2015-01122 under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, to the extent the requestor is the named individual's authorized representative, we find the circumstances have changed with respect to the named individual's private information, and the department may not rely on Open Records Letter No. 2015-01122 as a previous determination for that information. However, to the extent the requestor is not the named individual's authorized representative, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the named individual's private information. Furthermore, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the remaining information at issue. Accordingly, with the exception of the named individual's private information, we conclude the department must continue to rely on Open Records Letter No. 2015-01122 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In addition, if the requestor is not the named individual's authorized representative, we conclude the department must continue to rely on Open Records Letter No. 2015-01122 as a previous determination and withhold the named individual's private information in accordance with that ruling. However, in the event the requestor is the named individual's authorized representative, we will address your arguments against disclosure of the named individual's private information.

Section 552.101 of the Government Code excepts "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 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. 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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert the requestor is seeking a criminal history compilation of the individual named in the request. However, as noted above, the requestor may be an authorized representative of the named individual. In this case, the requestor would have a special right of access to this individual's information. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, to the extent the requestor is the named individual's authorized representative, none of the remaining information may be withheld as a compilation of criminal history under section 552.101 of the Government Code.

Section 552.130 of the Government Code 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.<sup>1</sup> *See* Gov't Code § 552.130(a). We note, to the extent the requestor is the named individual's authorized representative, the requestor has a right of access to the named individual's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Upon review, to the extent the requestor is the named individual's authorized representative, the department must withhold the motor vehicle record information we have marked that pertains to an individual other than the named individual under section 552.130 of the Government Code.

In summary, with the exception of the named individual's private information, the department must continue to rely on Open Records Letter No. 2015-01122 as a previous determination and withhold or release the information at issue in accordance with that ruling. If the requestor is not the named individual's authorized representative, the department must continue to rely on Open Records Letter No. 2015-01122 as a previous determination and withhold the named individual's private information in accordance with that ruling. To the extent the requestor is the named individual's authorized representative, the department must withhold the motor vehicle record information we have marked that pertains to an individual other than the named individual under section 552.130 of the Government Code and release the remaining information.

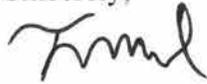
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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](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 "Tim Neal", written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 560802

Enc. Submitted documents

c: Requestor  
(w/o enclosures)