



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-15506

Dear Mr. Trevino:

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# 578878 (PIR No. W043670).

The City of Fort Worth (the "city") received a request for all police records regarding a named individual, including information pertaining to a specified incident. 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.

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 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) (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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records, other than information pertaining to the specifically requested incident, depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the city has submitted report number 89586949, which pertains to the specifically requested incident. This information is not part of a criminal history compilation, and thus, does not implicate the named individual's privacy. Therefore, this information is not confidential under common-law privacy as a criminal compilation, and the city may not withhold it under section 552.101 of the Government Code on that ground.

You contend some of the information in report number 89586949 is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find you have not demonstrated how the information you marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold the marked dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

You also assert the marked dates of birth of members of the public are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy on the basis of the decision in *Paxton v. City of Dallas*, No. 03-00546-CV (Tex. App.—Austin May 22, 2015) (mem. op.). However, we note the time for filing a petition for review with the Texas Supreme Court has not expired. Tex. R. App. P. 53.7. Accordingly, the city may not withhold the dates of birth at issue based on the court's decision in that case.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the city must

withhold the motor vehicle record information you have marked in report number 89586949 under section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records, other than information pertaining to the specifically requested incident, depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the marked motor vehicle record information in report number 89586949 under section 552.130 of the Government Code. The city must release the remainder of report number 89586949.

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# 578878

Enc. Submitted documents

c: Requestor
(w/o enclosures)