



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-09864

Dear Mr. Toulet:

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# 608367 (ORR# 18803).

The Midland Police Department (the "department") received a request for information relating to a named individual. To the extent it exists, you state the department has released to the requestor criminal history record information ("CHRI") pertaining to the named individual pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2) (entity authorized by chapter 411, subchapter F of Government Code to obtain CHRI maintained by Texas Department of Public Safety ("DPS") that relates to another person is authorized to obtain CHRI from any other criminal justice agency that relates to person); *see also id.* § 411.089 (criminal justice agency entitled to obtain from DPS any CHRI maintained by DPS about a person). 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 has submitted information that is not responsive to the instant request for information because it does not relate to the named individual. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 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. 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.

The present request seeks all reports pertaining to a named individual and requires the department to compile the named individual's criminal history. Thus, the instant request implicates the privacy of the named individual. Therefore, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

¹As noted above, to the extent it exists, you state the department has released to this requestor CHRI pertaining to the named individual pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2); *see also id.* § 411.089.

Ref: ID# 608367

Enc. Submitted documents

c: Requestor
(w/o enclosures)