



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2006

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2006-04283

Dear Mr. Patterson:

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# 247323.

The City of Waco (the "city") received a request for all arrest records pertaining to three named individuals during specified times. You state that you will release a portion of the requested information but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request is for all arrest records pertaining to three named individuals over a specified period of time. In this case, we believe that these individuals' right to privacy has been implicated. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, that information relating to routine traffic violations is not excepted from disclosure on this basis. *Cf.* Gov't Code § 411.082(2)(B).

You have submitted some documents which are related to routine traffic violations. These documents may not be withheld under section 552.101 in conjunction with common-law privacy, but they do contain information that is confidential by law. Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, this information, which you have marked, is confidential under section 560.003 of the Government Code, and the city must withhold it under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to the following:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state.

Gov't Code § 552.130(a). The Texas motor vehicle record information you have marked in the remaining documents must be withheld under section 552.130 of the Government Code.

The remaining submitted information also contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold

the social security numbers it has marked in the submitted information under section 552.147.<sup>1</sup>

In summary, the city must withhold any criminal records where the named individuals are listed as suspects, arrestees, or criminal defendants, to the extent they exist, under common law privacy as encompassed by section 552.101 of the Government Code. The information you have marked as confidential under section 560.003 of the Government Code must be withheld under section 552.101 of the Government Code. The city must also withhold the information it has marked in the remaining submitted information under sections 552.130 and 552.147 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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<sup>1</sup>We note that 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.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James Forrester  
Assistant Attorney General  
Open Records Division

JF/sdk

Ref: ID# 247323

Enc. Submitted documents

c: Mr. Derek Henager  
4017 Roselawn  
Waco, Texas 76710  
(w/o enclosures)