



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2006

Mr. Rashaad V. Gambrell
Assistant Attorney General
City of Houston - Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2006-08904

Dear Mr. Gambrell:

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# 256173.

The Houston Police Department (the "department") received a request for two specified incident reports and any and all records pertaining to a named individual from 1992 through 2003. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted incident report number 60706293 for our review. Therefore, to the extent this report existed on the date the department received this request, we assume it has been released. If you have not released this report, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 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 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. 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. In this case, the requestor is seeking all records pertaining to a named individual over a specified period of time. Accordingly, we believe that the named individual's right to privacy has been implicated. 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 in conjunction with common law privacy. However, in this instance, the requestor also asks for a specific incident report, number 087741497-L. This request does not implicate the named individual's common law right to privacy. Therefore, the department may not withhold incident report 087741497-L under common law privacy, and we will address the department's arguments regarding this information.

You claim that portions of incident report number 087741497-L are excepted from disclosure under common law privacy. The incident report at issue pertains to a sexual assault. In Open Records Decision No. 339 (1982), this office determined that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information). Accordingly, we agree that the victim's identifying information, which we have marked, must be withheld under section 552.101 in conjunction with the right of common law privacy.

Additionally, incident report number 087741497-L contains compilations of an individual's criminal history. As we have mentioned previously, such compilations are highly embarrassing information that are generally not of legitimate public interest. *Cf. Reporters Comm.*, 489 U.S. 764. We have marked a portion of the incident report at issue that is criminal history record information belonging to a member of the public that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

Incident report number 087741497-L also contains information subject to section 552.130 of the Government Code. Section 552.130 provides that a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from

public release. *See* Gov't Code § 552.130(a)(1), (2). We agree that the department must withhold the Texas motor vehicle record information you have marked under section 552.130.

Lastly, we note incident report number 087741497-L 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 social security numbers you have marked must be withheld pursuant to section 552.147.¹

In summary, with the exception of incident report number 087741497-L, the department must withhold any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant pursuant to section 552.101 of the Government Code in conjunction with common law privacy. The department must withhold the following information from incident report number 087741497-L: 1) the information we have marked pursuant to section 552.101 in conjunction with common law privacy; 2) the Texas motor vehicle record information you have marked under section 552.130 of the Government Code; and 3) the social security numbers you have marked pursuant to section 552.147 of the Government Code. The remaining information in incident report number 087741497-L 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

¹We 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.

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 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 256173

Enc. Submitted documents

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(w/o enclosures)