



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2007

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2007-07130

Dear Ms. Camp-Lee:

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#280410.

The City of Round Rock (the "city"), which you represent, received a request for "any records" regarding a named individual and information pertaining to a specified incident. You state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You 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 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. This section encompasses chapter 560 of the *Government Code* which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform

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.

us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 encompasses the common-law right to 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 met. *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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the requestor seeks, and the responsive information pertains solely to, a specified incident report. Accordingly, the request for information does not implicate the common-law privacy of the named person, and thus, the submitted information may not be withheld in its entirety on this basis. Upon review, we determine that the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. No portion of the remaining information, however, constitutes a compilation of an individual's criminal history, and may not be withheld on this basis.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (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. Accordingly, you must withhold the Texas motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

In summary, the city must withhold the following: (1) the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003

of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the information you have marked, in addition to the information we have marked, under section 552.130 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).

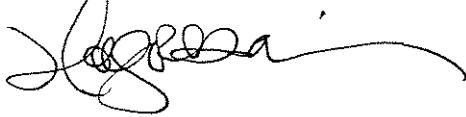
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Holly R. Davis", with a long horizontal flourish extending to the right.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID#

Enc. Submitted documents

c: Mr. Michael L. Horton
Aces Investigative Consultants
1403 Newbury Street
Georgetown, Texas 78626
(w/o enclosures)