



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 23, 2007

Mr. David K. Walker  
Montgomery County Attorney  
207 West Phillips, 1<sup>st</sup> Floor  
Conroe, Texas 77301

OR2007-09271

Dear Mr. Walker:

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#284605.

The Montgomery County Sheriff's Department (the "department") received a request for criminal records and sentences pertaining to a named individual. You claim that the requested 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 of the Government Code 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 asks the department for unspecified law enforcement records pertaining to a named individual thus implicating such individual's right to privacy. 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 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor appears to be the spouse of the individual to whom the request pertains. If so, the requestor may have a special right of access to any responsive information as the authorized representative of the individual to whom it pertains. *See* Gov't Code § 552.023; *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). If the requestor has a right of access to the information under section 552.023, then the department may not withhold any of the information from the requestor on privacy grounds under section 552.101, and must release any such information in its entirety. If the requestor does not have a special right of access under section 552.023, then the department must withhold any information made confidential by common-law privacy under section 552.101 of the Government Code.

We note that the information at issue contains Texas motor vehicle record information belonging to the requestor's spouse. 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.<sup>1</sup> However, section 552.130 also protects privacy interests. Thus, to the extent the requestor has a right of access under section 552.023 to her husband's private information, it may not be withheld under section 552.130. *Id.* § 552.023(a). To the extent the requestor does not have a right of access to her husband's private information, the department must withhold the information we have marked under section 552.130.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

In summary, if the requestor has a right of access under section 552.023 of the Government Code, the department must release the submitted information in its entirety to the requestor. If the requestor does not have a right of access under section 552.023, the department must withhold the following: (1) records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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).

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<sup>2</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. However, the requestor may have a right to her husband's social security number. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles.)

*However, the requestor may have a right to her husband's social security number. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).*

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, sweeping horizontal line extending to the right.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/eeg

Ref: ID# 284605

Enc. Submitted documents

c: Ms. Laura Kumar  
2226 Crysel Road  
Cleveland, Texas 77328  
(w/o enclosures)