ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2007

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

OR2007-12297

Dear Mr. Rashaad V. 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# 289770.

The City of Houston (the "city") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130 and 552.147 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 exception encompasses information that other statutes make confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). You state that the report you have submitted relates to juvenile conduct that occurred before January 1, 1996. However, although this report contains references to other incidents involving a juvenile offender, report number G91505 does not list a juvenile as a suspect or offender for the incident that is the basis for the report. Therefore, we find that this report

is not a juvenile law enforcement record and no portion of it may be withheld under section 552.101 in conjunction with section 51.14(d).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You have marked information that the city seeks to withhold under section 552.101 in conjunction with common-law privacy. In this instance, however, the information in question pertains to the requestor's client. The requestor has a special right of access to his client's private information under section 552.023 of the Government Code.[1] *See* Gov't Code § 552.023(a). Therefore, the city may not withhold the marked information from the requestor on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We note, however, that the doctrine of common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No.394 (1983); *cf.* Fam. Code § 58.007. Thus, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You claim that portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

You also assert that the social security numbers you have marked are excepted under section 552.147 of the Government Code, which provides that "[t]he social security number

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[1]Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

of a living person is excepted from" required public disclosure under the Act. We agree that the city may withhold the social security numbers you have marked under section 552.147.[2]

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The city may withhold the social security numbers marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.[3]

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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[2]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.

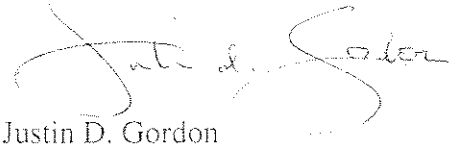
[3]We note, however, that the documents to be released contain information that is confidential with respect to the general public. See Gov't Code § 552.023. Thus, in the event the department receives another request for this information from someone other than this requestor, the department must again ask this office for a decision whether the information is subject to public disclosure.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 289770

Enc. Submitted documents

c: Ms. Gwendolyn Scott
Rodriguez White, P.L.L.C.
100 North Central Expressway, Suite 500
Dallas, Texas 75201
(w/o enclosures)