



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2007

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2007-14697

Dear Ms. Webster:

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# 294734.

The Waco Police Department (the "department") received a request for "all reports of incidents or allegations of criminal activity by" a named individual since January 1, 2006. You claim that the requested 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.

We first note, and you acknowledge, that the department failed to request this decision within the deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address your arguments concerning these exceptions.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. *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 this 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. 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.

The instant request is for all reports of incidents or allegations of criminal activity by the named individual. This request for unspecified law enforcement records requires the department to compile the named individual's criminal history. Therefore, to the extent that the department maintains any law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note that you have submitted photographs from case number 07-7390. You have failed to demonstrate that case number 07-7390 relates to the named individual as a suspect, arrestee, or criminal defendant; therefore, the photographs are not protected by common-law privacy and may not be withheld on that basis under section 552.101. Accordingly, we will address your other claims with respect to that information.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the department must withhold the Texas motor vehicle license plate number that we have marked pursuant to section 552.130.

In summary: (1) any law enforcement records maintained by the department that depict the named individual as a suspect, arrestee, or criminal defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining submitted 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 294734

Enc. Submitted documents

c: Mr. Stanley Rentz
506 Franklin
Waco, Texas 76701
(w/o enclosures)