



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2007

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2007-15218

Dear Ms. McClellan:

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# 294968.

The Dallas Police Department (the "department") received a request for copies of all incident reports involving two named individuals during the time between April 10, 2007 and August 30, 2007. 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 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). 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, in part, unspecified law enforcement records involving two named individuals. We agree that the portion of the request pertaining to the two named individuals, in part, requires the department to compile each person's criminal history. Thus, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted reports responsive to the request wherein neither of the named individuals is depicted as a suspect, arrestee, or criminal defendant. These reports do not constitute a compilation of the individuals' criminal history and may not be withheld in their entirety under section 552.101. However, we note that these reports contain medical information of one of the named individuals. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked medical information that the department must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes, such as Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate that the emergency communication district here is subject to section 772.318. Therefore, we find that the originating telephone numbers of the 9-1-1 callers in the reports and the originating addresses we have marked are confidential under section 772.318 of the Health and Safety Code, and the department must withhold this information under section 552.101 of the Government Code.

We note that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.¹ Gov't Code § 552.130(a)(1), (2). We agree that the

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department must withhold the Texas motor vehicle record information you have marked under section 552.130.

In summary, to the extent the department maintains information which depicts the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The marked medical information must be withheld under section 552.101 in conjunction with common-law privacy. We have marked the originating telephone numbers and originating addresses of 9-1-1 callers that must be withheld under section 552.101 in conjunction with section 772.318 of the Occupations Code. The department must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.²

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,

²We note, however, that the request indicates that the requestor represents an insurance company. As such, this requestor may be the authorized representative of one of the individuals whose records are the subject of this request for information, Ms. Harriet Robertson. If the requestor is Ms. Robertson's authorized representative, then she has a special right of access to Ms. Robertson's criminal records, to the extent they exist, under section 552.023 of the Government Code. In such case, the department may not withhold any such records based on Ms. Robertson's right to privacy under section 552.101. *See* Gov't Code § 552.023(a).

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 294968

Enc. Submitted documents

c: Ms. Debbie Thomas
Claim Representative
Central Insurance Adjusters
P.O. Box 612623
D/FW, Texas 75261
(w/o enclosures)