



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2007

Mr. John Ohnemiller  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2007-16668

Dear Mr. Ohnemiller:

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# 297839.

The Midland Police Department (the "department") received a request for records of a named individual's arrests for assault and public intoxication. 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 have reviewed the information you submitted.

Section 552.101 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 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 contend that this request for information requires the department to compile the named individual's criminal history. We note, however, that the request is for records of specific offenses involving the named individual. Therefore, we find that this is not a request for a compilation of the individual's criminal history, and the department may not withhold any of the submitted information on that basis under section 552.101 of the Government Code. However, we have marked portions of the submitted information that are private under section 552.101. *See Indus. Found.*, 540 S.W.2d at 683 (listing information Supreme Court held to be private); Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

We also note, however, that the requestor seeks access to the submitted information on behalf of the named individual. Thus, the requestor may be the individual's authorized representative. If the requestor is the individual's authorized representative, then the requestor has a right of access to the individual's private information under section 552.023 of the Government Code, and the department may not withhold that information from this requestor on privacy grounds under section 552.101. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>1</sup> If the requestor is not the named individual's authorized representative, then the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

We note that section 552.130 of the Government Code is applicable to some of the remaining information.<sup>2</sup> This section excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See Gov't Code* § 552.130(a)(1). We have marked Texas driver's license numbers that the department must withhold from the public under section 552.130. We note, however, that this exception protects personal privacy. Therefore, if the requestor is the authorized representative of the individual named in the request, then the requestor also has a right of access to the named individual's Texas driver's license number, and the department may not withhold that information from this requestor under section 552.130. *See Gov't Code* § 552.023(a); ORD 481 at 4.

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<sup>1</sup>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).

<sup>2</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

In summary: (1) the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access to the marked information under section 552.023 of the Government Code; and (2) the department must withhold the marked Texas driver's license numbers under section 552.130 of the Government Code, except to the extent that the requestor has a right of access to that information under section 552.023.<sup>3</sup> The rest of the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge that decision by suing the governmental

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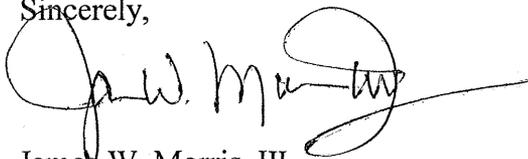
<sup>3</sup>We note that the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to the named individual's social security number if the requestor is the individual's authorized representative. *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).

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 "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 297839

Enc: Submitted documents

c: Kris Walker  
Permian Basin Community Centers  
400 North Carver  
Midland, Texas 79701  
(w/o enclosures)