



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2008

Mr. Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2008-09755

Dear Mr. Gorfida:

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# 316729.

The City of Sachse (the "city"), which you represent, received a request for information relating to a named individual and a specified address. You inform us that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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 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.

The instant request is for "any and all [information] on the above[-]named person and/or address for the last 15 years[.]" This request for unspecified law enforcement records requires the city to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent that it maintains any records that depict the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

Next, we address your representation that under section 552.130 of the Government Code, driver's license and motor vehicle information has been redacted from the responsive documents that were released to the requestor. We note that you also redacted this information from the copies that you sent to this office for our review. Section 552.301 of the Government Code prescribes procedures that must be followed in asking this office to determine whether requested information is excepted from public disclosure, unless the information is the subject of a previous determination. *See Gov't Code §§ 552.301(a); Open Records Decision No. 673 (2001) (previous determinations).* Among other things, a governmental body must submit to this office either the specific information that it seeks to withhold or representative samples if the information is voluminous. *See Gov't Code § 552.301(e)(1)(D).* You do not indicate, nor do our records reflect, that the city is authorized to withhold information under section 552.130 without first requesting a decision under section 552.301. In this instance, however, we are able to discern the nature of the redacted information. Accordingly, we will determine whether the city must withhold the information in question under section 552.130. In the future, the city should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling.¹ Redaction of such information may result in a determination that the information must be released. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit 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 information that we have marked under section 552.130 to the extent that the marked information is related to a Texas driver's license, motor vehicle registration or vehicle identification number.

¹We note that social security numbers also have been redacted from the documents that were released. 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.

In summary: (1) to the extent that the city maintains any records that depict the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the city must withhold the information that we have marked under section 552.130 of the Government Code to the extent that the marked information is related to a Texas driver's license, motor vehicle registration or vehicle identification number. 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). If the governmental body does not file suit over 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).

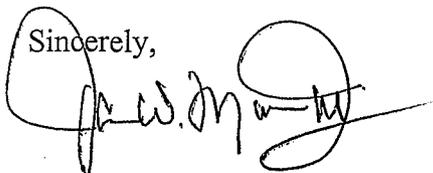
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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 "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

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

JWM/jh

Ref: ID# 316729

Enc: Submitted documents

c: Ms. Lori Dill
3250 Vinson Road
Wylie, Texas 75098
(w/o enclosures)