



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2008

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2008-12773

Dear Ms. Brown:

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# 322059.

The Plano Police Department (the "department") received a request for all information pertaining to the requestor and a named individual at a specified address. You state you will release a portion of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you have 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 section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has held the 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, we find the compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all police records involving the requestor and a named individual. This request, in part, requires the department to compile the individuals' criminal histories. We note, however, that section 552.023 of the Government Code gives a person 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 disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, the department may not withhold information under section 552.101 of the Government Code in order to protect the requestor's common-law privacy interests. However, this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also assert that Exhibit C is excepted under section 552.108(a)(1) of the Government Code. You state you will withhold Exhibit C under section 552.108, as it relates to an ongoing, criminal investigation, based upon the ruling in *Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist., Travis County, Tex., December 18, 2000). Therefore, the department may withhold Exhibit C in accordance with the ruling in *Attorney General v. Plano Police Department*. We note that you have the discretion to release all or part of Exhibit C that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, to the extent the department maintains law enforcement records depicting the named individual who is not the requestor as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold Exhibit C in accordance with the ruling in *Attorney General v. Plano Police Department*.

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).

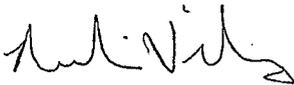
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 322059

Enc. Submitted documents

c: Mr. Peter R. Conwell
2740 South Hillbrier Circle
Plano, Texas 75075
(w/o enclosures)