



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2009

Mr. Albert D. Hammack
Town Attorney
Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205

OR2009-04589A

Dear Mr. Hammack:

This office issued Open Records Letter No. 2009-04589 (2009) on April 7, 2009. We have examined this ruling and determined that an error was made in its issuance. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on April 7, 2009. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 346887.

The Town of Highland Park (the "town") received a request for seven categories of information, including (1) police vehicle audio pertaining to a specified incident, (2) information pertaining to a specified letter sent by the town, (3) the policy manual for town dispatchers, (4) information pertaining to a January 12, 2009 complaint sent by the requestor, (5) information pertaining to a January 13, 2009 complaint sent by the requestor, (6) specified court documents, and (7) information pertaining to a specified town employee. You state that a portion of the requested information responsive to categories 1, 3, 4, 5, 6, and 7 been released to the requestor. You state the town has no information responsive to category 2 of the request.¹ You claim that the submitted information is excepted from

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ diss'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 section 730.004 of the Transportation Code, which provides that "[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 -730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. *See also id.* § 730.003(4) (defining motor vehicle record to include a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state). Section 552.101 also encompasses section 730.013, which provides that for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information [sic] was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

(c) Any authorized recipient who resells or rediscloses personal information obtained from an agency shall be required by that agency to:

(1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2) provide copies of those records to the agency on request.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$25,000.

Transp. Code § 730.013. You inform us that pursuant to a contract between the Texas Department of Public Safety ("DPS") and the town, DPS provides the town with information, including individual's names, addresses, and driver identification numbers, for use in carrying out its governmental functions. *See id.*, § 730.007(a)(2)(A)(i). We note that DPS is an agency under section 730.003(1) that obtains or compiles motor vehicle records. We further note that the names, addresses, and driver identification numbers, but not the zip codes, obtained by the town from DPS are considered personal information under section 730.003(6). *See id.* §730.003(6) (personal information means information that

identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information). Accordingly, we find that, by obtaining motor vehicle information from DPS to assist the town in carrying out its functions, the town is an authorized recipient of personal information for purposes of section 730.013. See *id.* § 730.007(a)(2)(A)(i) (authorized recipient includes a governmental agency using the information in carrying out the agency's functions).

Based upon your representations and our review of the information at issue, we conclude that, because the names, addresses, and driver identification numbers we have marked were obtained from DPS by an authorized recipient, and because this information is in the identical or substantially identical format that it was received by the town from DPS, the names, addresses, and driver identification numbers, but not the zip codes, are confidential under section 730.013(a) of the Transportation Code. Accordingly, as we have no indication that release of this information would be for a use permitted under section 730.007, we conclude that the owners' names, addresses, and driver identification numbers, which we have marked, must be withheld under section 552.101 of the Government Code.² The remaining responsive information, including the state of registration, the owners' zip code, and information concerning vehicle accidents, driving-related violations, or driver's license or registration status, does not consist of personal information for the purposes of section 730.003(6). *Id.* § 730.003(6)(A). Therefore, this information may not be withheld under section 552.101 in conjunction with section 730.013(a).

Section 552.101 also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *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). Although a compilation of a private citizen's criminal history is generally not of legitimate concern to the public, we note information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. Cf. Gov't Code § 411.082(2)(B). Additionally, because the town must withhold the individuals' personal information under section 552.101 in conjunction with section 730.013 of the Transportation Code, the remaining information does not identify any

²Because our ruling on this information is dispositive, we need not address your argument under section 552.101 in conjunction with section 2721 of title 18 of the United States Code.

individual with a privacy interest in the information at issue. Because the remaining information does not otherwise implicate the privacy interests of the individuals to whom it pertains, we conclude that none of the remaining information is confidential under section 552.101 in conjunction with common-law privacy, and it may not be withheld on this basis.

Finally, we address your assertion that some of the remaining submitted 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. Gov't Code § 552.130(a)(1), (2). We agree that the town must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, the town must withhold the names, addresses, and driver identification numbers of the individuals that we have marked under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. The town must also withhold the Texas motor vehicle record information we have marked under section 552.130. As you raise no other exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/dls

Ref: ID# 346887

Enc. Submitted documents

c: Requestor
(w/o enclosures)