



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Ms. Susan K. Durso
General Counsel
Texas Residential Construction Commission
P.O. Box 13509
Austin, Texas 78711-3509

OR2009-04867

Dear Ms. Durso:

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# 339800 (TRCC Public Information Request #2460).

The Texas Residential Construction Commission (the "commission") received a request for all records pertaining to a named builder. You state that you have released a portion of the requested information to the requestor. You also state that the requestor clarified her request, allowing the commission to redact information subject to sections 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ You claim that Exhibit D is excepted from

¹See Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request). Accordingly, any such information is not responsive to the request and need not be released to the requestor.

disclosure under section 552.101 of the Government Code.² 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. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *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 prongs of this test must be met. *Id.* at 681-87.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Furthermore, 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). This office has also found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find that some of the submitted information is protected by common-law privacy; therefore, we have marked the information that the commission must withhold under section 552.101 of the Government Code on that basis. We find, however, that the remaining information you seek to withhold under common-law privacy is not intimate or embarrassing or there is a legitimate public interest in the information. Therefore, none of the remaining information is confidential under common-law privacy, and the commission may not withhold it under section 552.101 of the Government Code on that basis. As you raise no other exception to disclosure, the remaining information must be released to the requestor.

²Although you also raise section 552.101 in conjunction with the attorney-client privilege under Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. We also note that although you also claim rule 503 of the Texas Rules of Evidence and Texas Rule of Civil Procedure 192.5, you make no arguments to support these privileges. Therefore, we assume you have withdrawn your claims that these privileges apply to the submitted information.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 339800

Enc. Submitted documents

cc: Requestor
(w/o enclosures)