



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2009

Ms. Eileen McPhee
Carls, McDonald & Dalrymple, L.L.P.
Barton Oaks Plaza 2
901 South Mopac Expressway, Suite 500
Austin, Texas 78746

OR2009-05421

Dear Ms. McPhee:

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# 340712.

The City of Georgetown (the "city"), which you represent, received a request for all information related to a named individual, the requestor, and a specified address for the last two years. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the instant request for information because it occurred outside the specified time period. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

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). To demonstrate the applicability of common-law privacy, both prongs of this

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You claim the request for information requires the city to compile unspecified law enforcement records, thus implicating the privacy of the named individual and the requestor. We agree the request implicates the privacy of the named individual. Therefore, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, one of the submitted responsive reports does not list the named individual or the requestor as a suspect, arrestee, or criminal defendant. Therefore, this report does not implicate the named individual or the requestor's privacy concerns. Furthermore, the requestor has a special right of access to information that would ordinarily be withheld to protect her privacy interests. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, the responsive reports listing only the requestor as a suspect, arrestee, or criminal defendant also may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy.

We note, however, the remaining responsive reports contain information subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" *Id.* § 552.130. We have marked information subject to section 552.130. We note, however, because this exception protects personal privacy, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, to the extent the information we have marked belongs to the requestor, it may not be withheld under section 552.130 of the Government Code and must be released. The Texas motor vehicle record information not belonging to the requestor must be withheld under section 552.130 of the Government Code.

In summary, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

such information under section 552.101 in conjunction with common-law privacy. To the extent the Texas motor vehicle record information we have marked does not belong to the requestor, it must be withheld under section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining responsive information must be released to the requestor.³

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 340712

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note some of the information being released is confidential and not subject to release to the general public. Therefore, if the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.