



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2009

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

OR2009-08924A

Dear Mr. Hammack:

This office issued Open Records Letter No. 2009-08924 (2009) on June 29, 2009. Since this time, we have determined that Open Records Letter No. 2009-08924 is incorrect. When this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2009-08924. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 355414.

The Town of Highland Park (the "town") received a request for information related to a named individual, as well as information related to a specified incident. You state the town has released most of the requested information to the requestor. You state the town has redacted a social security number pursuant to section 552.147 of the Government Code.¹ You claim a portion of the submitted information is excepted from disclosure under

¹Section 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.

section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us that the requestor has excluded driver's license information from his request. Accordingly, any driver's license information within the submitted documents is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the town is not required to release that information.²

We next address your arguments for the submitted responsive 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 section encompasses information made confidential by other statutes. Chapter 411 of the Government Code makes criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information you have marked does not consist of CHRI obtained from DPS or any other criminal just agency. Therefore, the town may not withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

We note that 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. U. S. Dep't of Justice v. Reporters*

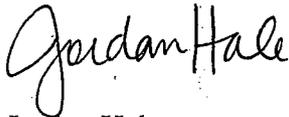
²As we are able to make this determination, we need not address your arguments against the disclosure of this information.

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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We find the information we have marked is a compilation of the named individual's criminal history. This information is not of legitimate public concern. Therefore, the town must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. As you raise no other arguments against disclosure, the remaining responsive 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/eeg

Ref: ID# 355414

Enc. Submitted documents

cc: Requestor
(w/o enclosures)