



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Mr. Mack Reinwand
Assistant Police Legal Advisor
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-01411

Dear Mr. Reinwand:

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# 373087 (APD No 2009-12-112)..

The Arlington Police Department (the "department") received a request for all arrest records or any reports pertaining to a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 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 test must be satisfied. *Id.* at 681-82. This office has found that 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. The present request requires the department to compile unspecified law enforcement records concerning the individual at issue. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note, however, that you have submitted information that does not relate to the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of the individual's criminal history, the department may not withhold it under section 552.101 in conjunction with common-law privacy. Therefore, we will address your argument against disclosure for this information.

Section 552.101 encompasses section 58.007 of the Family Code, which provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate

to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find the remaining information does not involve a juvenile as a suspect, offender, or defendant. Therefore, you have failed to demonstrate that the information at issue consists of juvenile law enforcement records for purposes of section 58.007. Accordingly, the this information may not be withheld under section 552.101.

We note that this information includes Texas motor vehicle record information.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

In summary, to the extent the department maintains any information that depicts the named individual as an arrestee, criminal defendant, or suspect, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.² The remaining information must be released.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

¹The 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).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains social security numbers. Section 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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 373087

Enc. Submitted documents

cc: Requestor
(w/o enclosures)