



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2010

Ms. Linda Hight
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2010-01512

Dear Ms. Hight:

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# 368919.

The City of Cleburne (the "city") received a request for the arrest record of a named individual during a specified time period. You claim the submitted information is excepted from 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 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 common-law right to 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. *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 681-82. 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) (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.

You assert that the instant request implicates the named individual's privacy. You further state that the requestor is the named individual's court-appointed attorney, but that the city has not yet received a copy of the appointment or a signed release for the information. Therefore, we must rule conditionally. If the city does not receive notification that the requestor is the authorized representative of the named individual, then to the extent the city maintains law enforcement records that depict this individual as a criminal defendant, suspect, or arrestee, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov't Code § 552.229(a) (consent for release of information excepted from disclosure to general public but available to specific person under section 552.023 Government Code must be in writing and signed by specific person or person's authorized representative); *see also id.* § 552.023(a), (b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the city does receive notification that the requestor is the authorized representative of the named individual, then the requestor has a special right of access to information pertaining to his client that would otherwise be confidential under common-law privacy and it may not be withheld from him on this basis. In that instance, we will address whether any of the submitted information is confidential under section 552.130.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1), (2). The city must withhold the Texas license plate numbers you have highlighted pursuant to section 552.130.¹ We note, however, that because this exception protects personal privacy the requestor has a right of access to his client's motor vehicle record information. Thus, to the extent any of the highlighted information pertains to the requestor's client, it may not be withheld from the requestor under section 552.130. *See id.* § 552.023.

In summary, if the city does not receive notification that the requestor is the authorized representative of the named individual, then to the extent the city maintains law enforcement records depicting the individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the city does receive notification that the requestor is the

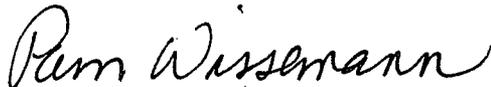
¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

authorized representative of the named individual, then the city must release such information to the requestor.² However, in that instance, the city must withhold the information you have highlighted under section 552.130 of the Government Code unless it pertains to the requestor's client.

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/cc

Ref: ID# 368919

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²In this case because the requestor would have a special right of access to any information being released, the city would again need to seek a decision from this office if it receives another request for the same information from a different requestor.