



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-05672

Dear Mr. Mann:

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# 376549 (GCA 10-0114).

The Garland Police Department (the "department") received a request for information relating to a specified arrest of a named individual for alleged driving while intoxicated ("DWI").¹ You state that some of the requested information has been released. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.²

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. You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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 elements of the

¹You inform us that a responsive video recording is in the custody of Dallas County. Thus, we understand that the video is not available for inspection or copying. We note that the Act does not require the department to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by the department or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

²We note that a social security number has been redacted from the submitted information. 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.

test must be established. *See id.* at 681-82. Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We agree that the information you have marked in blue is intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude that the department must withhold that information under section 552.101 in conjunction with common-law privacy. We have marked other private information that must also be withheld under section 552.101.

Our office also has determined 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the submitted records contain references to prior DWI convictions of the named individual. In the context of the current charge of DWI, information relating to the prior convictions for the same offense is a matter of legitimate public interest and may not be withheld on privacy grounds under section 552.101. However, the department must withhold any information that depicts the named individual as a suspect, arrested person, or defendant in a previous criminal case other than a DWI under section 552.101 in conjunction with common-law privacy.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked in red is related to an ongoing criminal investigation. Based on your representation, we conclude that the department may withhold that information under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or motor vehicle title or registration issued by an agency of this state or a personal identification document issued by an agency

of this state or a local agency authorized to issue a personal identification document. *See* Gov't Code § 552.130(a)(1)-(3). We agree that the department must withhold the Texas driver's license, motor vehicle and personal identification information you have marked in green under section 552.130.³ We have marked additional Texas motor vehicle information that also must be withheld on this basis.

In summary: (1) the information you have marked in blue, along with the additional information we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy; (2) any information that depicts the named individual as a suspect, arrested person, or defendant in a previous criminal case other than a DWI must be withheld under section 552.101 in conjunction with common-law privacy; (3) the information you have marked in red may be withheld under section 552.108(a)(1) of the Government Code; and (4) the Texas driver's license, motor vehicle and personal identification information you have marked in green, as well as the Texas motor vehicle information we have marked, must be withheld under section 552.130 of the Government Code. The department must release the remaining information, unless it has already done so.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

³We note that 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 and license plate numbers under section 552.130, without the necessity of requesting an attorney general decision.

Ref: ID# 376549

Enc: Submitted information

c: Requestor
(w/o enclosures)