



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutors Office
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-07953

Dear Ms. Sandoval-Walker:

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# 381425.

The El Paso Police Department (the "department") received a request for records involving a specified organization or any of five named members of that organization. You state the department does not have any records involving three of the named individuals.¹ You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

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. Section 552.101 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received, or obtain information that is not held by or on behalf of the governmental body. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

test must be satisfied. *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.

The present request, in part, seeks all department records involving five named individuals. Although you state the department does not have any records for three of those individuals, we find this request still requires the department to compile the remaining two named individuals' criminal history. Thus, this portion of the request implicates these two individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting either of the remaining named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. You submitted four reports which do not list either of these two individuals as a suspect, arrestee, or criminal defendant, which contain information subject to sections 552.130 and 552.136 of the Government Code.²

Section 552.130 exempts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we marked in the submitted reports under section 552.130 of the Government Code.

Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. Therefore, the department must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, to the extent the department maintains or has access to law enforcement records depicting either of the individuals at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code

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

in conjunction with common-law privacy. The department must also withhold the Texas motor vehicle record information we marked under section 552.130 of the Government Code and the insurance policy number we marked under section 552.136 of the Government Code.³ The remaining submitted information must be released.⁴

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, -



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 381425

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We 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 a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, and an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the information being released includes a social security number. 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.