



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Mr. Leonard V. Schneider
Liles Parker, P.L.L.C.
525 East Sam Houston Parkway North, Suite 415
Houston, Texas 77060

OR2010-09370

Dear Mr. Schneider:

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# 384186.

The Huntsville Police Department (the "department"), which you represent, received a request for thirty-six categories of information. You state that you have released information responsive to thirty-five of the requested categories. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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

¹Although the department claims the submitted information is subject to section 552.108 of the Government Code, we understand you to raise section 552.101 of the Government Code, as this is the proper exception for the substance of your arguments.

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this 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, requires the department to compile unspecified law enforcement records concerning named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note that the department has submitted an incident report which does not depict the named individuals as suspects, arrestees, or a criminal defendants. This report does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101.

We address your arguments for the incident report at issue. As stated above, 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.* at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual must be withheld. However, in certain circumstances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain reports, the entire report must be withheld to protect the individual's privacy. In this instance, the remaining information involves conduct that is highly intimate and embarrassing and is not of legitimate public interest. Normally, only information that references such conduct is private. However, the department has revealed such information in its brief and, therefore, the requestor knows the nature of the relevant incident and the individual involved. Therefore, only withholding the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. Accordingly to protect the privacy of the individual to whom the information relates, the department must

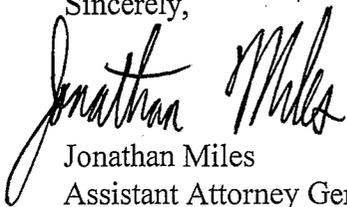
withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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 incident report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 384186

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²In the future, the department should redact such information from its brief before sending a copy to the requestor.