



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2010

Ms. Luz Sandoval Walker
Assistant City Attorney
City of El Paso
810 Overland
El Paso, Texas 79901

OR2010-11911A

Dear Ms. Walker:

This ruling examines Open Records Letter No. 2010-11911 (2010) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code.

The El Paso Police Department (the "department") received a request for reports of a named person from June 1990 to the date of the request. In the department's original request for a decision in this matter, the department claimed the requested information was confidential under section 552.101 of the Government Code in conjunction with common-law privacy, and, alternatively, excepted from disclosure under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2010-11911, we concluded the department may withhold the submitted information under section 552.108(a)(1) of the Government Code after release of the basic information pursuant to section 552.108(c). We have re-examined our ruling in Open Records Letter No. 2010-11911 and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 6, 2010.

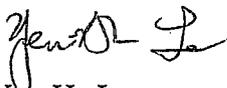
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.301. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information 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. *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. 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. The present request requires the department to compile unspecified law enforcement records concerning the named individual. Therefore, to the extent the department maintains 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.¹ Open Records Letter No. 2010-11911 is overruled to the extent it conflicts with this ruling.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/eeg

¹Because section 552.101 is dispositive, we do not address the department's section 552.108 assertion.

Ref: ID# 399414

Enc: Submitted documents

c: Requestor
(w/o enclosures)