



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2010

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 Main Street
Round Rock, Texas 78664-5246

OR2010-13453

Dear Ms. Camp-Lee:

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# 393305.

The Round Rock Police Department (the "department"), which you represent, received a request for information pertaining to case #10-0428-0023. You state you have released some of the responsive information. You have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are 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.

Initially, you acknowledge, and we agree, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—

¹We note that 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.

Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-2 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption, we will consider whether these sections require you to withhold portions of the submitted 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 exception encompasses the doctrine of common-law privacy, which protects information if it (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). The types of information considered intimate or 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office also has found 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. *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we find the information you have highlighted in green and the information you have marked in red is highly intimate and embarrassing and not of legitimate public concern. Thus, the department must withhold this marked information under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

You have marked information that you claim is subject to section 552.130 of the Government Code, some of which you state will be redacted pursuant to Open Records Decision No. 684 (2009). Section 552.130 of the Government Code excepts from public disclosure

information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We note that section 552.130 protects personal privacy. In this instance, one of the individuals whose privacy interests are implicated is the requestor. Thus, the requestor has a right of access to his Texas motor vehicle information, and the department may not withhold that information under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Accordingly, we agree that, with the exception of the requestor's Texas motor vehicle record information, which we have marked for release, the department may withhold the Texas driver's license and license plate numbers you have redacted pursuant to Open Records Decision No. 684. You acknowledge that the remaining Texas motor vehicle information you have highlighted in yellow is not subject to Open Records Decision No. 684. Thus, the remaining Texas motor vehicle record information you have highlighted in yellow must be withheld under section 552.130 of the Government Code.

In summary, the department must withhold the information you have highlighted in green and marked in red under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's Texas motor vehicle record information, which we have marked for release, the department may withhold the Texas driver's license and license plate numbers you have redacted pursuant to Open Records Decision No. 684. The department must also withhold the Texas motor vehicle record information you have highlighted in yellow under section 552.130 of the Government Code. The remaining information must be released.²

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

²We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023. If the department receives another request for this particular information from a different requestor, then the department should again seek a ruling from this office.

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,

A handwritten signature in cursive script, appearing to read "Andrea L. Caldwell".

Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 393305

Enc. Submitted documents

c: Requestor
(w/o enclosures)