



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2010

Mr. Jason M. Rammel
Sheets & Crossfield, P.C.
For City of Round Rock
309 East Main Street
Round Rock, Texas 78664-5246

OR2010-13489

Dear Mr. Rammel:

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# 392735.

The Round Rock Police Department (the "department"), which you represent, received a request for information pertaining to a specified accident. 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 request a ruling, submit the responsive information, or submit comments stating which exceptions apply within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason

exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). As sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider their applicability to the submitted information. Further, we note a portion of the submitted information is subject to section 552.136 of the Government Code, which can provide a compelling reason to withhold information.¹ Thus, we will address that exception as well.

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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Additionally, 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, records related to routine traffic violations are not considered criminal history record information. *See* Gov't Code § 411.082(2)(B) (CHRI does not include driving information).

You claim the portions of information you have marked in blue and green are protected by common-law privacy. Upon review, we find a portion of this information, as well as the additional information we have marked, is highly intimate or embarrassing and of no legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. We note, however, that some of the information you marked pertains to the incident in the submitted report.

¹The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Upon review, we find there is a legitimate public interest in this information, as it relates to the accident at issue. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Furthermore, we find none of the remaining information you have marked is highly intimate or embarrassing or not of legitimate public concern. Accordingly, we find you have failed to demonstrate the applicability of common-law privacy to the remaining information you have highlighted in blue and green, and the department may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). We note the driver’s license or license plate issuing state does not constitute motor vehicle record information for purposes of section 552.130. Additionally, we note the requestor in this instance is an insurance claims adjuster for the individual listed as the victim in the submitted information. Thus, if the requestor is acting as this individual’s authorized representative, then the requestor has a right of access to this individual’s Texas motor vehicle record information under section 552.023 of the Government Code, and this individual’s information may not be withheld from the requestor under section 552.130 of the Government Code. *See id.* § 552.023(a) (person or person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). In that instance, the department must only withhold the Texas motor vehicle information we have marked and indicated on the submitted audio recording that does not pertain to the victim under section 552.130 of the Government Code. Conversely, if the requestor is not the authorized representative of the victim, then the department must only withhold the entirety of the information we have marked and indicated on the submitted audio recording under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, “[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.” Gov’t Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.²

²We 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 Texas driver’s license numbers and Texas license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the victim's authorized representative, the department must withhold the submitted information we have marked and indicated on the submitted audio recording that does not pertain to the victim under section 552.130 of the Government Code. Conversely, if the requestor is not the authorized representative of the victim, then the department must withhold the entirety of the information we have marked and indicated on the submitted audio recording under section 552.130 of the Government Code. The department must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The remaining information must be released.

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 McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 392735

Enc. Submitted documents

c: Requestor
(w/o enclosures)