



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

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

OR2010-14032

Dear Ms. 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# 397165 (El Paso Case No. 2010-08-19-AG).

The El Paso Police Department (the "department") received a request for all accident and incident reports pertaining to a named individual from 2002 until the date of the request. You state that you have released the reports in which the individual was named as a complainant or reference. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You have submitted accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). You claim that the accident reports are excepted from disclosure by section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. Section 552.101 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 section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person

who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this case, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident reports under section 552.101 in conjunction with section 550.065(b).

Section 552.101 also 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. 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 courthouses 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We agree the present request requires the department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. 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 any such information under section 552.101 in conjunction with common-law privacy.

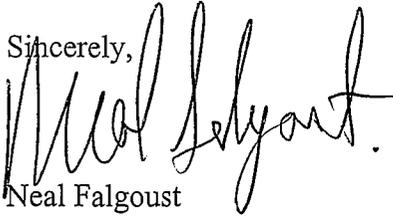
In summary, the department must withhold the submitted accident report forms pursuant to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. To the extent the department maintains information in which the individual is named as a suspect, arrestee, or criminal defendant, it must be withheld under section 552.101 of the Government Code in conjunction with the doctrine of 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 397165

Enc. Submitted documents

c: Requestor
(w/o enclosures)