



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2010

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-15596

Dear Ms. Brown:

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# 396862 (ORR# WALJ072310).

The Plano Police Department (the "department") received a request for the arrest report pertaining to case number 366-81524-07. You state the department has provided some of the requested information to the requestor. You claim portions of the submitted arrest report 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.

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. 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. You have marked criminal history information you claim is protected by common-law privacy. Upon review, we find the information you have marked consists of an individual's compiled criminal history in which there is no legitimate public interest. Therefore, the department must withhold the criminal history information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You have also marked additional information you assert is protected by common-law privacy. The type 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 also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find a portion of the information you seek to withhold pertaining to a particular medical issue is not of legitimate public concern. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate, however, how the remaining information you seek to withhold is highly intimate or embarrassing in this instance. Consequently, this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You also generally assert this remaining information at issue is protected under constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to the information at issue. Accordingly, the information may not be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. As you have not claimed any other exceptions to disclosure for this information, it must be released.

You have marked a Texas driver's license number you indicate is excepted under section 552.130 of the Government Code. This section provides information relating to a motor vehicle operator's or driver's license or personal identification document issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (3). Therefore,

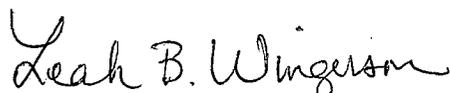
the department must withhold the driver's license number you have marked, as well as the Texas personal identification number we have marked, under section 552.130 of the Government Code.¹

In summary, the department must withhold the marked criminal history and medical information under section 552.101 of the Government Code in conjunction with common-law privacy, and the marked Texas driver's license and personal identification numbers under section 552.130 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 396862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note this office 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.