



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2010

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2010-16915

Dear Ms. Brooks:

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 requests were assigned ID# 399361 and 399362. We have combined these files and will consider the issues presented in this single ruling assigned ID# 399361.

The Midland Police Department (the "department") received two requests from the same requestor for information involving two named individuals and a specified time interval. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note that some of the submitted information does not fall within the time interval specified by the requestor and thus is not responsive to these requests for information. This decision does not address the public availability of the information that is not responsive to these requests, which we have marked, and the department need not release that information in response to these requests.

We also note that one of the submitted police reports was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2009-17219 (2009). In that report, we concluded that the department may withhold report number 2009-10250025 under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c). You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the department must dispose of report number 2009-10250025 in accordance with Open Records Letter No. 2009-17219. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we address your claim under section 552.101 of the Government Code, which 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 that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. 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). We also find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to “all records” involving the two named individuals. Thus, this request for unspecified law enforcement records requires the department to compile the named individuals’ criminal histories and thereby implicates their privacy interests. Therefore, to the extent the department maintains any information that depicts either of the named individuals as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. We note that information that does not depict either of the named individuals as a suspect, arrested person, or criminal defendant does not implicate their privacy interests and may not be withheld as a compilation of criminal history information under section 552.101 and common-law privacy.

We note that section 552.130 is applicable to some of the submitted information.¹ This section excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). The department must withhold the Texas driver’s license and motor vehicle information we have marked under section 552.130 of the Government Code.²

¹This office will raise section 552.130, which is a mandatory exception, on behalf of a governmental body. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

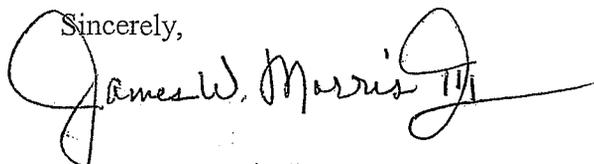
²We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number and a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

In summary: (1) the department must dispose of report number 2009-10250025 in accordance with Open Records Letter No. 2009-17219; (2) to the extent the department maintains any information that depicts either of the named individuals as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the marked Texas driver's license and motor vehicle information must be withheld under section 552.130 of the Government Code.³ The rest of the submitted 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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 399361

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³We note that the submitted information includes social security numbers. 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.