ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2010

Ms. Beth Moroney
Paralegal
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-17775

Dear Ms. Moroney:

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# 402295 (COSA File No. 10-1558).

The City of San Antonio (the "city") received a request for the arrest record of a specified person. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the submitted information and considered the exception you claim.

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 section encompasses the common-law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 met. *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 (1) public records found in courthouse files and local police stations and (2) a compiled summary of information, noting that individual has significant privacy interest in compilation of one's

criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. We also note that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf.* Gov't Code § 411.082(2)(B).

In this instance, the requestor asks the city for the arrest record of a named individual, thus implicating such individual's right to privacy. Therefore, to the extent the city maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with 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,

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID# 402295

Enc. Submitted documents

c: Requestor
(w/o enclosures)