



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2010

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

OR2010-17900

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# 401326 (ORR # GERW090810).

The Plano Police Department (the "department") received a request for any and all records regarding three named individuals. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have 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. Section 552.101 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. *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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal

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

The present request requires the department to compile unspecified law enforcement records concerning three named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. We note, however, the requestor is an investigator with the Public Defender of Oklahoma County. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We are unable to determine whether the requestor is acting as the authorized representative of one or all three of the named individuals. Therefore, we rule conditionally. To the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, and the requestor does not have a right of access under section 552.023, the department must withhold such information under section 552.101 in conjunction with common-law privacy. To the extent the department maintains such records, and the requestor has a right of access under section 552.023, the department may not withhold such information under section 552.101 in conjunction with common-law privacy.

To the extent the department maintains records depicting the named individuals as suspects, arrestees, or criminal defendants and the requestor has a right of access to the information at issue, we address section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license numbers we marked under section 552.130.<sup>2</sup>

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, and the requestor does not have a right of access under section 552.023 of the Government Code, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent such records exist and the requestor does have a right of access under section 552.023 of the Government Code, the department may not

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

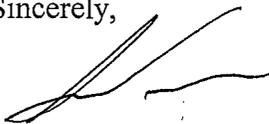
<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130, without the necessity of requesting an attorney general decision.

withhold the information under common-law privacy, but the department must withhold the information we marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 401326

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the remaining information contains social security numbers not belonging to any of the named individuals. 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.