



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2010

Mr. James K. Crain, III  
Crain & Sheppard  
106 South Gonzales Street  
Cuero, Texas 77954

OR2010-19253

Dear Mr. Crain:

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# 403475.

The City of Cuero (the "city"), which you represent, received a request for all records related to a named individual. We note you have redacted a social security number pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor states the city has failed to comply with section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. We note the city raises section 552.101 of the Government Code. In addition, we note the submitted information is

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<sup>1</sup>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. Gov't Code § 552.147(b).

<sup>2</sup>Although you also raise section 552.305 of the Government Code, this section is not an exception to disclosure. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See id.*

subject to sections 552.130 and 552.136 of the Government Code. Regardless of whether the city failed to meet its section 552.301 requirements, sections 552.101, 552.130, and 552.136 are mandatory exceptions that constitute compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally).

Next, we note the city has redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). The city does not assert, nor does our review of our records indicate, the city has been authorized to withhold the redacted information without seeking a ruling from this office. *See id.* § 552.301(a). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the city must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See id.* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302. We will address the city's argument against disclosure of 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 also encompasses the doctrine of common-law privacy. Common-law privacy 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). The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common law-privacy. *See Gov't Code* § 411.082(2)(B). We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law

enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information pertaining to routine traffic violations. Thus, this information is generally not part of a criminal history compilation. We will consider your argument for this information.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. We note information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we find that none of the remaining information is confidential under section 411.083, and the city may not withhold it on this basis.

We note the remaining information includes information subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

We note the remaining information contains insurance policy numbers. Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the city must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 in conjunction with common-law privacy. The city must also withhold the information we have marked under sections 552.130 and 552.136 of the Government Code.<sup>4</sup> The remaining information must be released.<sup>5</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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 403475

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>In Open Records Decision No. 684 (2009), we issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note the information being released contains a social security number. 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. See Gov't Code § 552.147.