



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-19268

Dear Ms. Middlebrooks:

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# 404161 (DPD request # 2010-9249).

The Dallas Police Department (the "department") received a request for the report related to service number 265707-X. You claim the information you marked is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You represent the information you marked pertains to a pending criminal prosecution for DWI. We note the marked information includes a statutory warning and a notice of suspension. Because copies of these documents, which we have marked, have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Therefore, the department may not withhold the marked statutory warning and notice of suspension under section 552.108(a)(1).

However, based upon your representation and our review, we conclude that the release of the remaining you marked information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, with the exception of the statutory warning and notice of suspension, the department may withhold the information you marked under section 552.108(a)(1).

Next, you claim the information you marked is excepted under section 552.101 of the Government Code. Section 552.101 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 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 satisfied. *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). Determinations under common-law privacy must be made on a case-by-case basis. See *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 373 at 4 (1983). Upon review, the information you have marked is of legitimate public interest in the context of the subject individual’s arrest for DWI. See *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Therefore, because this information is of legitimate public interest in this instance, the information you marked is not confidential under common-law privacy and may not be withheld under section 552.101.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Upon review, we agree the Texas license plate numbers and registration years you marked are generally protected by section 552.130. We note, however, section 552.130 protects privacy interests. In this instance, the requestor may be an authorized representative of the arrestee. Thus, the requestor may have a right of access under section 552.023 to the that individual’s Texas motor vehicle record information. *Id.* § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds information is considered confidential under privacy principles). If the requestor is an

authorized representative of the arrestee, then she has a right of access under section 552.023 to his information and it may not be withheld from her under section 552.130. If the requestor is not an authorized representative of the arrestee, then this information must be withheld along with the other marked information under section 552.130 of the Government Code.¹

In summary, with the exception of the statutory warning and notice of suspension, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. If the requestor is not an authorized representative of the arrestee, the department must withhold his information under section 552.130 of the Government Code. The department must withhold the remaining information you marked under section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.²

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note that if the requestor is an authorized representative of the arrestee, some of the information being released is confidential with respect to the general public. Thus, if the department receives another request for this information from a different requestor, the department should again seek a decision from this office.

Ref: ID# 404161

Enc. Submitted documents

c: Requestor
(w/o enclosures)