



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2011

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
For City of Round Rock  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2011-00245

Dear Ms. Camp-Lee:

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# 405025.

The Round Rock Police Department (the "department"), which you represent, received a request for any and all information related to a specified case number. You state you have released some information. You inform us you will redact certain information pursuant to Open Records Decision No. 684 (2009) and section 552.147 of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies that authorizes withholding ten categories of information, including Texas driver's license numbers and Texas 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. 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.

Initially, we note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-13858 (2010). However, while the requestor in Open Records Letter No. 2010-13858 had a potential right of access to a portion of the information at issue, this request involves a different requestor with no special right of access to the information. Thus, we find that the circumstances have changed, and the department may not continue to rely on Open Records Letter No. 2010-13858 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against the disclosure of the submitted information.

Next, you acknowledge, and we agree, the department failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider their applicability to the submitted information.

Section 552.101 of the Government Code excepts from public 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 of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from

disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). In addition, 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) (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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we agree that the information you have marked in green is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information you have marked in green under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked in red is not highly intimate or embarrassing and not of legitimate public concern. Thus, the information you have marked in red may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). You have marked information in yellow that you seek to withhold under section 552.130. Thus, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked in green under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The remaining 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](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,

A handwritten signature in cursive script, appearing to read "Andrea L. Caldwell".

Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/vb

Ref: ID# 405025

Enc. Submitted documents

c: Requestor  
(w/o enclosures)