



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2011

Ms. Judith Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76701-2570

OR2011-01914

Dear Ms. Benton:

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# 408449 (LGL-10-1644).

The City of Waco (the "city") received a request for information relating to a specified accident. We understand you will redact a social security number under section 552.147 of the Government Code.¹ We understand you have released some of the requested information. You claim portions of the remaining 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.

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. The doctrine of common-law privacy protects information if it (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 elements of the test must be established. *Id.*

¹Section 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. See Gov't Code § 552.147.

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) (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, 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). You seek to withhold a portion of the submitted information, which you have marked, because you argue it is a compilation of the arrestee'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, we find a portion of the information you have marked relates to the arrestee's current involvement in the criminal justice system and the remaining information you have marked is of legitimate public interest in the context of the individual's arrest for driving while intoxicated. *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, the city may not withhold this information section 552.101 in conjunction with common-law privacy and the holding in *Reporters Committee*.

You also seek to withhold the identity and statement of a witness to the accident under common-law privacy and generally cite to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), in support of your argument under common-law privacy for this information. In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. Here, however, the information at issue relates to a traffic accident, not to an allegation of sexual harassment. Because the allegation does not concern sexual harassment, we find that *Ellen* is not applicable in this instance. Consequently, the city may not withhold the witness's identity or statement under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

You have marked portions of the submitted information under section 552.130 of the Government Code. Section 552.130 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. Upon review, we find the information we have marked consists of Texas motor vehicle record information that the city must withhold under section 552.130. However, the remaining information you have marked relates to either the style of a vehicle or the year it was made. This information is not Texas motor vehicle information for the purposes of

section 552.130. Accordingly, the city may not withhold any of the remaining information under section 552.130 of the Government Code. 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 408449

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains the requestor's client's Texas motor vehicle record information, to which he has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.