



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2011

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

OR2011-02892

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# 410364 (DPD PIR # 2010-11413).

The Dallas Police Department (the "department") received a request for records relating to a specified incident. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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. This section encompasses the common-law right to privacy, which 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 prongs of this test must be established. *Id.* at 681-82. This office has found that 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.*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). In addition, we have found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state that the requested records pertain to a pending criminal prosecution. Based on your representation and our review, we agree that release of the information you have marked 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) (specifying law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code 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; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]” Gov't Code § 552.130(a). Therefore, the department must withhold the information you have marked under section 552.130.²

²We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies that authorizes the withholding of ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Finally, you have marked a social security number under section 552.147. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department may withhold the social security number under section 552.147.³

In summary, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy and section 552.130. The department may withhold the information you have marked under sections 552.108 and 552.147. 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, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 410364

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that 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.