



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2011

Mr. Ron G. MacFarlane, Jr.
Ron G. MacFarlane, Jr., P.C.
3010 LBJ Freeway, Suite 1200
Dallas, Texas 75234

OR2011-03134

Dear Mr. MacFarlane:

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# 410424.

The Cedar Hill Police Department (the "department"), which you represent, received a request for all information listing a named individual as a suspect or arrestee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

Initially, we understand you to assert that the request to the department was an improper request. Section 552.301(c) of the Government Code provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." Gov't Code § 552.301(c). You argue that because this request was made by electronic mail to a staff member who was not the designated custodian of the department, this request was not a proper written request, and therefore did not require the department to respond. We note, however, that although the department was not required to respond, the department did make arguments against disclosure of the requested information. Accordingly, we will address the department's arguments.

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 encompasses the doctrine of common-law privacy, which

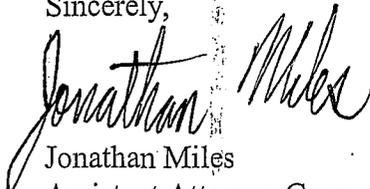
protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be 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. 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.

In this instance, the request is for all reports pertaining to a named individual. We find this request requires the department to compile unspecified law enforcement records concerning the named individual. Such a request implicates the named individual's privacy rights. Thus, to the extent the department maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in dark ink and is positioned above the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 410424

Enc. Submitted documents

c: Requestor
(w/o enclosures)