



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 28, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-04151

Dear Mr. Alicie:

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# 412496.

The Baytown Police Department (the "department") received a request for all arrest records and incident reports involving a named individual, as well as a specified arrest record and incident report. You indicate social security numbers will be redacted from the responsive records pursuant to section 552.147(b) of the Government Code.¹ You claim 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.

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. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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*

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. See Gov't Code § 552.147(b).

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.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the individual named in the request. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information pertaining to the incident and arrest specified in the request. Additionally, you have submitted records that do not list the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, the department may not withhold it under section 552.101 on that basis. However, we will address your remaining arguments for this information.

You assert some of the submitted information is protected by common-law privacy. The doctrine of common-law privacy is subject to the two pronged test discussed above. Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*, which 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. *Indus. Found.*, 540 S.W.2d at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we agree the information you have marked, in addition to the information we have marked, is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. You seek to withhold some of the remaining information under section 552.101 in conjunction with chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). This section applies to accident report forms prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. *See id.* § 550.065(a); *see also id.* § 550.064 (Texas Peace Officer's Accident Report form). There is no indication the information you have marked was prepared in accordance with chapter 550 or

section 601.004 of the Transportation Code. We therefore determine the information at issue is not confidential under section 550.065(b) and may not be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code provides 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). Accordingly, the department must withhold the Texas motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.²

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 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 552.101 of the Government Code in conjunction with common-law privacy and the information 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, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

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

Ref: ID# 412496

Enc. Submitted documents

c: Requestor
(w/o enclosures)