



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2011

Mr. Les Moore
Police Legal Advisor
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2011-04508

Dear Mr. Moore:

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# 413270.

The Irving Police Department (the "department") received a request for all department records associated with a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. This exception 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 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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor asks the department for all records associated with a named individual, thus implicating this individual's right to privacy. Therefore, to the extent the department maintains any law enforcement records in which the named individual is listed as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted records in which the named individual is not a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the individual's criminal history, and may not be withheld under section 552.101 on this basis. However, we will consider the applicability of the doctrine of common-law privacy to this information.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. 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. *Id.* at 683. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the submitted information indicates the requestor knows the identity of the alleged victim listed in the report submitted as Exhibit B-2. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the department must withhold Exhibit B-2 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, that the report submitted as Exhibit B-1 must be withheld in its entirety on the basis of common-law privacy. We find that some of the information in Exhibit B-1 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the

department must withhold the information we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information in Exhibit B-1 is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information in Exhibit B-1 may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit.¹ Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license numbers we have marked under section 552.130.²

In summary, to the extent the department maintains any law enforcement records in which the named individual is listed as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold Exhibit B-2 and the portions of Exhibit B-1, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains social security numbers. 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.

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 black ink, appearing to read "Andrea L. Caldwell". The signature is written in a cursive style with a large initial "A".

Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 413270

Enc. Submitted documents

c: Requestor
(w/o enclosures)