



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2011

Ms. Cecilia Gamez
Crime Records Bureau
City of McAllen
P.O. Box 220
McAllen, Texas 78501

OR2011-06504

Dear Ms. Gamez:

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# 419036.

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The McAllen Police Department (the "department") received a request for a "criminal history check" of a named individual. You claim 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 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." Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (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. 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, we find a compilation of a private citizen's criminal history is

generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf.* Gov't Code § 411.082(2)(B).

The requestor asks for all information held by the department concerning a named individual. 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. However, you have submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant; therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

You assert the remaining information is excepted from disclosure under section 552.108(b) of the Government Code, which reads as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not stated the remaining information pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have not met your burden under section 552.108(b)(1). A governmental body claiming section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

adjudication. *See* Gov't Code § 552.108(b)(2). You have not stated the remaining information pertains to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have not met your burden under section 552.108(b)(2). Lastly, you do not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(b)(3). Thus, you have not met your burden under section 552.108(b)(3). Therefore, the department may not withhold any of the remaining information under section 552.108(b).

Some of the submitted information is excepted from disclosure under section 552.130 of the Government Code.¹ Section 552.130 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). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.²

To conclude, the department must withhold any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.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,

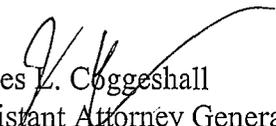
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold 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 opinion.

³We note the submitted information contains a social security number. 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.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 419036

Enc. Submitted documents

c: Requestor
(w/o enclosures)