



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2011

Mr. Joe Torres III
Attorney for the City of Alice
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2011-06960

Dear Mr. Torres:

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# 418282.

The City of Alice (the "city"), which you represent, received a request for all records relating to two named persons from 2001 to 2010. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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 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 met. *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 that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

In this instance, the request is for all information pertaining to two named individuals during a specified time. This request requires the city to compile unspecified law enforcement records concerning the named individuals, thus implicating the named individuals' privacy

rights. Therefore, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. If any such information has been submitted, we have marked it. We note you have submitted information that does not relate to the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals and may not be withheld under section 525.101 on that basis. Accordingly, we will address your remaining arguments against disclosure of this information.

You assert the remaining information is confidential pursuant to the doctrine of constitutional privacy. Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first constitutionally protected interest is an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie*, 765 F.2d at 492). You have failed to submit any arguments that explain how any portion of the remaining information falls within the zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. Accordingly, none of the information at issue may be withheld under section 552.101 in conjunction with constitutional privacy.

Finally, you raise section 552.108 for the remaining information. However, although you generally assert the remaining submitted reports are excepted from disclosure under section 552.108, you have not specified the subsection of section 552.108 that applies to the information, nor have you submitted any specific arguments explaining how section 552.108 applies to the information. See *id.* § 552.301(e)(1)(A) (stating it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). Consequently, you have failed to establish the applicability of section 552.108 of the Government Code to the information at issue, and the city may not withhold any information on that basis.

We note the remaining reports contain information subject to section 552.130 of the Government Code. Section 552.130 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 city must withhold the information we have marked under

section 552.130.¹ We note the requestor has a right of access to her own motor vehicle record information, and the city may not withhold it from her under section 552.130. *See id.* § 552.023(a) (person has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.130. The remaining information must be released to the requestor.²

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

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¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies, authorizing the withholding of ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We 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. *See Gov't Code* § 552.147(b).

Ref: ID # 418282

Enc. Submitted documents

c: Requestor
(w/o enclosures)