



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2011

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2011-07869

Dear Mr. Mann:

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# 419428 (Garland GCA 11-02126).

The Garland Police Department (the "department") received a request for the report related to a specified case and for all reports involving the requestor and a named individual during a specified period. You state the department has released information concerning the specified case and one additional report, with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim 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. 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

¹Open Records Decision No. 684 serves as 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 decision.

test must be established. *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) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouses 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 requestor here seeks “copies of all the reports” involving a named individual during a specified period. We agree this request requires the department to compile unspecified criminal history records concerning the individual named in the request and 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 any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You have submitted reports that do not depict the named individual as a suspect, arrestee, or criminal defendant. Common-law privacy also protects from disclosure the type of information considered highly intimate or embarrassing by the Texas Supreme Court 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. *Id.* at 683. Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. Upon review, we find the requestor knows the identity of the individual involved in Call ID# 2010E118587 and the circumstances surrounding the incident. Thus, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the subject individual’s common-law right to privacy. Therefore, the department must withhold the report related to Call ID# 2010E118587 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Upon further review, we find the remaining reports do not involve situations where it is necessary to withhold the entire report in order to protect the subject individual’s right to privacy. However, we agree the information you have marked, along with the information we have marked, is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the department must withhold the information you have marked and the information we have marked in the remaining reports under section 552.101 of the Government Code in conjunction with common-law privacy. As the remaining information in these reports is not highly intimate or embarrassing and of no legitimate concern to the public, the department may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Section 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to an individual's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes CHRI for purposes of section 411.083. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. We find the remaining information you have marked relates to active warrant information or driving record information. As section 411.083 does not apply to this information, the department may not withhold it under section 552.101 of the Government Code on that basis.

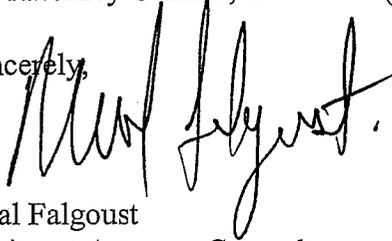
Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1), (2). Accordingly, the department must withhold the expiration date we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the entire report related to Call ID# 2010E118587, the information you have marked, and the information we have marked 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 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we have 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 419428

Enc. Submitted documents

c: Requestor
(w/o enclosures)