



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2011

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2011-10269

Dear Ms. Graham:

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# 427579.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You state the department will release some of the requested information. You claim that 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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The doctrine of common-law privacy protects a

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 under the Act. Gov't Code § 552.147(b).

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 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. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. Title 28, part 20 of the Code of Federal Regulations, which governs the release of criminal history record information ("CHRI") that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we conclude that the remaining information you have marked consists of CHRI that the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country or a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document is excepted from public release. *See Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4* (to be codified as an amendment to Gov't Code § 552.130(a)(1), (3)). Upon review, we agree the department must withhold the driver's license numbers you have marked under section 552.130 of the Government Code.² However, you have also marked

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a Texas driver's license number and Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

numbers under section 552.130 identified in the documents as “SID” and “State ID Number.” It is unclear whether these numbers consist of information relating to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document. Accordingly, to the extent these numbers consist of numbers pertaining to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document, the department must withhold them under section 552.130. If these numbers do not consist of numbers pertaining to such a personal identification document, they may not be withheld under section 552.130.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 411.083 of the Government Code. The department must withhold the driver’s license numbers you have marked under section 552.130 of the Government Code. To the extent the marked “SID” and “State ID Number” pertain to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document, the department must also withhold them 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 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

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³We note that the requestor has a special right of access to some of the information being released in this instance. Gov’t Code § 552.023 (person or person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests).

Ref: ID# 427579

Enc. Submitted documents

c: Requestor
(w/o enclosures)