



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2011

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O Box 860358
Plano, Texas 75086

OR2011-10660

Dear Ms. Henry:

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# 424777 (ORR #COUC050311).

The Plano Police Department (the "department") received a request for all records pertaining to a named individual since 2001. You state some information has been released to the requestor. 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 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) (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.

The present request seeks all of the department's records involving a named individual. This request, in part, requires the department to compile the named individual's criminal history and thus implicates the named individual's right to privacy. Thus, 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 any such information under section 552.101 of the Government Code in conjunction with common-law privacy. You submitted information that does not involve the named individual as a suspect, arrestee, or criminal defendant, and thus may not be withheld as part of a criminal history compilation.

You claim portions of the submitted information are is excepted under common-law privacy. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked the portions of the submitted information that are highly intimate or embarrassing and of no legitimate public interest. The department must withhold this marked information under section 552.101 in conjunction with common-law privacy. However, you do not explain how the remaining information you marked is highly intimate or embarrassing and of no legitimate public interest. Thus, no remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual's interest in avoiding disclosure of personal matters. *Id.* at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* Information protected under constitutional privacy must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, Texas, 765 F.2d 490 (5th Cir. 1985)). 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 v. City of Hedwig Village*, Texas, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not provided any arguments demonstrating how constitutional privacy applies to the information at issue. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.130 provides that “[i]nformation is excepted from the requirements of [the Act] if the information relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country[.]”¹ 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)). The department must withhold the driver’s license number we marked in the remaining information under section 552.130 of the Government Code.²

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 any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

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

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including Texas a driver’s license number under section 552.130 of the Government Code.

Ref: ID# 424777

Enc. Submitted documents

c: Requestor
(w/o enclosures)