



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2011

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

OR2011-15368

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# 433691.

The City of Alice (the "city") received a request for information concerning a specified arrest and any other arrest pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 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

¹Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Accordingly, we find the city has waived its claim under this exception. See Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

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. Upon review, we find the requestor, in part, seeks information concerning a specified incident, and you have submitted information responsive to this portion of the request. Therefore, we find this portion of the request does not require the city to compile unspecified law enforcement records and does not implicate the privacy interests of the named individual. Accordingly, the city may not withhold the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.130 of the Government Code 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 another state or country.² 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). We note, however, section 552.130 is designed to protect individual privacy, and the requestor may be the authorized representative of the person whose information is at issue. *See* Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles). As we are unable to make this determination, we must rule conditionally. If the city determines the requestor is not the authorized representative of the person whose information is at issue, then the city must withhold the information we have marked under section 552.130 of the Government Code. If the city determines the requestor is the person's authorized representative, then the requestor has a right of access to this information, and the city may not withhold it under section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.

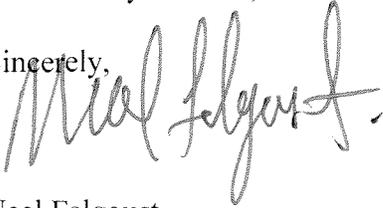
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 horizontal line at the end.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 433691

Enc. Submitted documents

c: Requestor
(w/o enclosures)