



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

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

OR2011-17389

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# 439859.

The Mesquite Police Department (the "department") received a request for a specified arrest report and call sheet. You indicate you will release the requested call sheet. You claim 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 the common-law right of 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. In addition, 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. Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the submitted information indicates the requestor is the spouse of the individual whose privacy interest is at issue. Therefore, if the requestor is the authorized representative of the individual at issue, then pursuant to section 552.023 of the Government Code, the requestor has a right of access to the submitted information, and the department may not withhold any information from the requestor on the basis of common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor is not the individual's authorized representative, then the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1)). We note section 552.130 protects personal privacy. Accordingly, the department must generally withhold the Texas driver's license number you have marked under section 552.130 of the Government Code. However, as noted above, the requestor is the spouse of the individual whose Texas motor vehicle record information is at issue and may be this individual's authorized representative. If the requestor is the authorized representative of this individual, then she has a special right of access to information that would ordinarily be withheld to protect privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative 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). Thus, if the requestor is the individual's authorized representative, then the department may not withhold the information you have marked under section 552.130 of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Conversely, if the requestor is not the individual's authorized representative, then the department must withhold the information you have marked under section 552.130 of the Government Code.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, if the requestor is not the authorized representative of the individual whose private information is at issue, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information marked under section 552.130 of the Government Code and release the remaining information. If the requestor is the authorized representative of the individual whose private information is at issue, the department must release the information to this requestor in its entirety.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 439859

Enc. Submitted documents

c: Requestor
(w/o enclosures)