



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-17876

Dear Ms. Middlebrooks:

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# 443605 (DPD PIR No. 2011-10186).

The Dallas Police Department (the “department”) received a request for arrest reports involving a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See 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

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

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.

The requestor seeks access to unspecified arrest reports involving a named individual. Thus, his request requires the department to compile the named individual's criminal history and thereby implicates the individual's privacy interests. In this instance, however, the requestor may be an authorized representative of the individual whose privacy interests are implicated. As such, the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the general public to protect the individual's privacy. *See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).*² As we are unable to determine whether the requestor is the individual's authorized representative, we will rule in the alternative. Thus, if the requestor is not the individual's authorized representative, then to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the individual's authorized representative, then the requested information may not be withheld on privacy grounds under section 552.101. In that event, we will address the other exceptions you claim.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). You state release of the information you have marked under section 552.108 would interfere with a pending criminal prosecution. Based on your representation, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *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).*

²Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

Although you seek to withhold marked driver's license and motor vehicle information under section 552.130, we note this exception protects personal privacy. Thus, if he is the named individual's authorized representative, the requestor has a right of access under section 552.023 of the Government Code to the individual's driver's license and motor vehicle information, and the department may not withhold that information under section 552.130 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4.

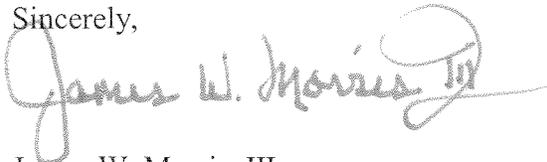
Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The requestor also has a right, however, to the named individual's social security number if he is the individual's authorized representative. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

In summary, if the requestor is not the named individual's authorized representative, then any information maintained by the department that depicts the individual as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the individual's authorized representative, then the department may withhold the marked information related to the pending prosecution under section 552.108(a)(1) of the Government Code and must release the rest of the submitted information, including the named individual's driver's license and motor vehicle information and his social security number.

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 blue ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looped initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 443605

Enc: Submitted documents

c: Requestor
(w/o enclosures)