



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2011

Ms. Susan Camp-Lee
Attorney for City of Round Rock
Sheets & Crossfield, PC
309 East Main Street
Round Rock, Texas 78664-5246

OR2011-17984

Dear Ms. Camp-Lee:

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# 440741.

The Round Rock Police Department (the "department"), which you represent, received a request for information regarding a specified incident. You state some information has been released to the requestor. You also state the department has redacted social security numbers pursuant to section 552.147¹ of the Government Code and insurance policy numbers pursuant to section 552.136 of the Government Code.² 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 claimed exceptions 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

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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

²Subsections 552.136(c)-(e) provide the procedures by which a governmental body may redact information protected by section 552.136(b) without the necessity of requesting an attorney general decision under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)-(e)); *see also* Gov't Code § 552.136(b).

Code § 552.101. This section encompasses the common-law right to 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 met. *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) (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. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. We also note information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov't Code § 411.082(2)(B)*. 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 the marked information under section 552.101 on the basis of common-law privacy.

You state the department has redacted information under section 552.130 of the Government Code. Section 552.130 provides, in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(a)). Effective September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See id.* (to be codified at Gov't Code § 552.130(c)-(e)). The statutory amendments to section 552.130 of the Government Code thus superceded Open Records

Decision No. 684 (2009) on September 1, 2011, with respect to information subject to subsections 552.130(a)(1) and (a)(3).³ See ORD 684 at 8. However, information subject to subsection 552.130(a)(2), relating to motor vehicle titles and registrations, is not included in the scope of section 552.130(c). Thus, Open Records Decision No. 684 was not superceded with respect to Texas license plate numbers and the portions of photographs or videos which reveal a Texas license plate number, which a governmental body may still withhold under Open Records Decision No. 684 without requesting a decision from this office under the Act. However, you have also redacted motor vehicle title and registration information which is protected by section 552.130(a)(2) but is not encompassed by Open Records Decision No. 684 and thus may not be withheld without requesting a decision from this office. *Id.*; see also *id.* § 552.130(c)-(e). Upon review, we find the department must withhold most of the information you have marked under section 552.130 of the Government Code. However, we note section 552.130 protects personal privacy. In this instance, the requestor is an attorney for one of the individuals whose information is at issue. Thus, he has a right of access under section 552.023 of the Government Code to his client's information. 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, with the exception of information regarding the requestor's client, which we have marked for release, the department must withhold the information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked, and the additional information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of information we have marked for release, the department must withhold the information you have marked under section 552.130. The remaining information must be released to the requestor.

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,

³Open Records Decision No. 684 is a previous determination to all governmental bodies that authorized them to withhold ten categories of information, including Texas driver's license numbers and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 440741

Enc. Submitted documents

c: Requestor
(w/o enclosures)