



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2011

Ms. Linda Pemberton
Paralegal
Killeen Police Department
3304 Community Boulevard
Killeen, Texas 76542

OR2011-18217

Dear Ms. Pemberton:

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# 443971 (W006793).

The Killeen Police Department (the "department") received a request for incident reports pertaining to a named individual. You claim the requested 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. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly

¹Although you also raise section 552.108 of the Government Code, you have provided no arguments in support of the applicability of that exception. Therefore, this letter ruling does not address section 552.108. See Gov't Code § 552.301(e)(1)(A) (governmental body must provide written comments explaining applicability of each exception it claims).

embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 present request requires the department to compile unspecified law enforcement records concerning the individual named in the request. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted records that do not list the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, the department may not withhold it under section 552.101 on that basis.

We note some of the submitted information is subject to section 552.130 of the Government Code.² Section 552.130 provides that information relating to a motor vehicle operator's or driver's license or a motor vehicle title or registration 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 an amendment to Gov't Code § 552.130(a)(1)-(2)). Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked the motor vehicle record information the department must withhold under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.³

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the information to be released contains a social security number. Section 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 a decision from this office. *See* Gov't Code § 552.147(b).

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 443971

Enc. Submitted documents

c: Requestor
(w/o enclosures)