



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Mr. Ricardo Perez
The Perez Law Firm
812 Del Oro
Pharr, Texas 78577

OR2011-18674

Dear Mr. Perez:

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# 439289.

The Hidalgo Independent School District (the "district"), which you represent, received a request for all faxes and attachments sent by a named individual to another specified individual, the Hidalgo Municipal Court, or a specified fax number.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.129, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹You state the district sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

²Although you also initially raised section 552.108, you make no arguments to support this exception. Accordingly, we find the district 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).

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 of the Government Code encompasses the doctrine of common-law privacy, which protects information that (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 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 courthouse 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). We also find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Although you contend the request at issue implicates the privacy of certain individuals, after reviewing the request and the submitted information, we find the requestor is seeking specified faxes not information pertaining to a specific individual. Accordingly, we find this request does not require the district to compile unspecified law enforcement records; thus, the request does not implicate the individuals’ common-law right to privacy. Therefore, the district may not withhold the submitted information under section 552.101 of the Government Code on that ground.

Common-law privacy also protects the types of information considered intimate or embarrassing by the Texas Supreme Court, which includes 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. *Indus. Found.* at 683. In addition, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code

§ 552.102(a). The Texas Supreme Court recently held section 552.102(a) exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Thus, *Texas Comptroller* applies to only a public employee's birth date maintained by the employer in an employment context. In this instance, the birth dates at issue are located in the submitted traffic citations, which you state you are not holding in an employment context. Therefore, we conclude the district may not withhold any of submitted information under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). We note section 552.117 applies only to information held by a governmental body in an employment context. Thus, information that is not held in an employment context may not be withheld under section 552.117(a)(1). As previously noted, you state the submitted information is not held by the district in an employment capacity. Accordingly, we find no part of the information at issue may be withheld under section 552.117(a)(1) of the Government Code.

Section 552.129 of the Government Code provides as follows:

A record created during a motor vehicle emissions inspection under Subchapter F, Chapter 548, Transportation Code, that relates to an individual vehicle or owner of an individual vehicle is excepted from [required public disclosure].

Id. § 552.129. You state documents B-19 and B-20 are receipts related to motor vehicle inspections. Upon review, we find the district has failed to demonstrate how the information at issue constitutes records created during a motor vehicle emissions inspection subject to section 552.129 of the Government Code. Therefore, the district may not withhold this information under section 552.129 of the Government Code.

Section 552.130 of the Government Code exempts 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 and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130. Accordingly, the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is

collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, the motor vehicle record information we have marked under section 552.130 of the Government Code, and the insurance policy numbers we have marked under section 552.136 of the Government Code. 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 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/ag

Ref: ID# 439289

Enc. Submitted documents

c: Requestor
(w/o enclosures)