



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2012-01234

Dear Ms. Bull:

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# 443304 (Arlington Ref. No. 5799-110211).

The Arlington Police Department (the "department") received a request for any information pertaining to the investigation of all complaints against and involving a specified individual from January 2009 to the date of the request. You state you will release some of the information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the request because they are not in the specified time period. This ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release this information in response to this request.

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 section encompasses the doctrine of common-law privacy, which protects information if (1) it 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. 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. *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. *United States 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to unspecified law enforcement records relating to the named individual. Thus, this request requires the department to compile the named individual's criminal history and thereby implicates her right to privacy. Accordingly, to the extent the department maintains any information that depicts the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interest of the named individual and may not be withheld as a compilation of the individual's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, we will consider your arguments against the disclosure of this information.

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. You claim report number 11-24361 should be withheld in its entirety on the basis of common-law privacy. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, you have not demonstrated, and the information at issue does not reflect, a situation in which report number 11-24361 must be withheld in its entirety on the basis of common-law privacy. We note, however, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. See Open Records Decision Nos. 470 (1987)

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

(illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked information in report number 11-24361 that is highly intimate and embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information under section 552.101 in conjunction with common-law privacy. However, we find the remaining information at issue is not intimate or embarrassing. Therefore, none of the remaining information in report number 11-24361 may be withheld under section 552.101 in conjunction with common-law privacy. As you raise no other exceptions, the remaining information in report number 11-24361 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/em

Ref: ID# 443304

Enc. Submitted documents

c: Requestor
(w/o enclosures)