



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2012

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2012-10478

Dear Ms. Quinn:

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# 458377 (Reference No. 12-506).

The City of Cedar Park (the "city") received a request for information related to a named individual and three specified addresses during a particular time period. You state the city will release the information submitted in Exhibit E. You further state the city will withhold driver's license numbers pursuant to section 552.130(c) of the Government Code and a Texas license plate number pursuant to Open Records Decision No. 684 (2009).¹ The city will also withhold the social security numbers you have marked pursuant to section 552.147(b) of the Government Code.² You claim that the remaining requested information is excepted from

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including a Texas license plate number under section 552.130 of the Government Code.

We note vehicle identification numbers are not covered by Open Records Decision No. 684 or section 552.130(c).

²Section 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 under the Act. Gov't Code § 552.147(b).

disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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. This exception 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. *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) (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). We also 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, in part, access to unspecified law enforcement records involving a named individual. Thus, this part of the request requires the city to compile the named individual's criminal history and thereby implicates the privacy interest of the named individual. Therefore, to the extent the city maintains any records that depict the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history.

You have submitted a report that does not depict the named individual as a suspect, arrested person, or criminal defendant. That report is not part of a compilation of criminal history and does not implicate the named individual's privacy interests. Thus, that report may not be withheld under section 552.101 on privacy grounds as a compilation of criminal history information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state Exhibit D pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, the city may withhold Exhibit D from disclosure based on section 552.108(a)(2) of the Government Code.

You seek to withhold the basic information in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. As noted above, common-law privacy is encompassed by section 552.101 and protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W. 2d at 685. Common-law privacy also protects the type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, 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. *See id.* at 683. We find the information we have marked in Exhibit D is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the city must withhold the marked portions of the basic information in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information is not private, and may not be withheld under section 552.101 of the Government Code on that basis.

In summary, to the extent the city maintains any records that depict the named individual as a suspect, arrested person, or criminal defendant, the city must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history. With the exception of the basic front page offense and arrest information, the city may withhold Exhibit D from disclosure based on section 552.108(a)(2) of the Government Code. In releasing the basic information in Exhibit D, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³

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

³As our ruling is dispositive, we do not address your remaining claims.

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, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 458377

Enc. Submitted documents

c: Requestor
(w/o enclosures)