



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2012

Mr. Jeffrey L. Moore
Counsel for the City of The Colony
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-11958

Dear Mr. Moore:

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# 460707.

The City of The Colony Police Department (the "department"), which you represent, received a request for all arrests, offenses, or charges involving a named individual, including an arrest on or about a specified date. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 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 section 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 prongs of this test must be satisfied. *See 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all records pertaining to the named individual. This portion of the request requires the department to compile the named individual's criminal history. We note, however, the requestor may be acting as the named individual's authorized representative; therefore, he may have a right of access under section 552.023 of the Government Code to any information the department would otherwise be required to withhold from the public to protect this individual's privacy. *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). We are unable to determine whether the requestor is acting as the authorized representative of the named individual. Therefore, we rule conditionally. If the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the department determines the requestor does not have a right of access under section 552.023 as the named individual's authorized representative, the department must withhold such information under section 552.101 in conjunction with common-law privacy. If the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the department determines the requestor has a right of access under section 552.023 as the named individual's authorized representative, the department may not withhold that information from this requestor as a compilation of the named individual's criminal history under section 552.101 in conjunction with common-law privacy. However, we note the requestor is also seeking, in part, information regarding an incident that occurred on or about a specified date. Because it was specifically requested, this portion of the request does not implicate the named individual's common-law right to privacy. Thus, the information responsive to this portion of the request is not part of a criminal history compilation, and we will address your arguments against the disclosure of this information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *See id* Gov't Code § 552.130(a)(1). We note section 552.130 does not protect the state of issuance of a driver's license. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. You have not demonstrated how any of the remaining information you marked consists of motor vehicle record information, and it may not be withheld under section 552.130.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. The department may withhold the social security numbers within the submitted documents under section 552.147 of the Government Code.¹

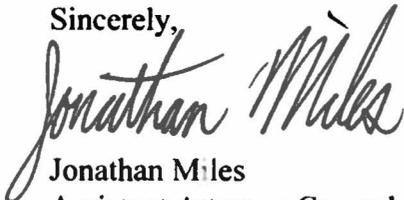
¹We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

In summary, with the exception of the incident that occurred on the specified date, if the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the department determines the requestor does not have a right of access under section 552.023 of the Government Code as the named individual's authorized representative, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department may withhold the social security numbers within the submitted documents under section 552.147 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 460707

Enc. Submitted documents

c: Requestor
(w/o enclosures)