



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2012-13483

Dear Mr. Brown:

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# 463004.

The El Paso Police Department (the "department") received a request for all records pertaining to a named individual, including information pertaining to two specified arrests. You claim that the submitted information is excepted from disclosure under sections 552.101 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 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue the present request requires the department to compile unspecified law enforcement records concerning the individual at issue. However, we note you have only submitted information pertaining to the two specified arrests. Therefore, we find none of the submitted information may be withheld as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find none of the submitted information falls within the zones of privacy or otherwise implicates an individual's privacy interest for purposes of constitutional privacy. Therefore, the department may not withhold any of the submitted information under section 552.101 in conjunction with constitutional privacy.

We note the submitted records contain the named individual's fingerprints. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprints. Therefore, we find the marked fingerprints are confidential under section 560.003 of the Government Code.

The remaining information contains motor vehicle record information subject to section 552.130 of the Government Code. This section provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a)(1), (2). Accordingly, we find the marked motor vehicle record information is confidential under section 552.130 of the Government Code.

In this instance, however, the requestor is a representative of the Adult Protective Services division of the Texas Department of Family and Protective Services (“DFPS”).¹ Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154 of the Human Resources Code provides in part:

(a) The [DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person, agency, or institution that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). The request for information reflects the requestor seeks the submitted information for purposes of an Adult Protective Services investigation. Consequently, we understand that DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of a disabled person. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the submitted information under section 48.154 of the Human Resources Code. Therefore, there is a conflict between the confidentiality provided by sections 560.003 and 552.130 of the Government Code and the right of access provided by section 48.154 of the Human Resources Code. Where general and specific statutes are in irreconcilable conflict, the specific provision prevails over the general provision. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 48.154 generally provides DFPS representatives with access to any information necessary to perform their duties under chapter 48 of the Human Resources Code. *See* Hum. Res. Code § 48.154. However, section 560.003 specifically protects biometric identifiers and has its own release provisions. Thus, section 560.003 is more specific than the general right of access provided under section 48.154. Further, section 552.130 specifically protects motor vehicle record information and contains its own access provisions governing release of information. As

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

such, it is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is also more specific than the general right of access provided by section 48.154. Therefore, notwithstanding the provisions of section 48.154 of the Human Resources Code, the fingerprints and motor vehicle record information we have marked must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and section 552.130 of the Government Code, respectively. The remaining information must be released to this requestor pursuant to section 48.154 of the Human Resources Code.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 463004

Enc. Submitted documents

c: Requestor
(w/o enclosures)