ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

Ms. Elizabeth S. Horn
Assistant City Attorney
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

OR2012-14583

Dear Ms. Horn:

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# 465411.

The City of Carrollton (the "city") received a request for all police reports pertaining to a named individual, including a specified report. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code.[1] 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 common-law right to privacy, which protects information if it (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 met.

[1]Although you raise section 552.101 of the Government Code in conjunction with the Texas Supreme Court decision in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010) for the birth dates in the submitted information, we understand you to raise section 552.102(a) of the Government Code, as that is the proper exception to raise for this information.

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, noting 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.

In this instance, the requestor, in part, asks the city for any reports involving the named individual. We find this portion of the request requires the city to compile unspecified law enforcement records concerning the named individual, thus implicating her right to privacy. Therefore, to the extent the city maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the requestor also asks the city for a specified report involving the named individual. This portion of the request does not seek unspecified records pertaining to a named individual, and thus, is not a request for a compilation of any individual's criminal history. Therefore the city may not withhold the specified report, number 2011024432, under section 552.101 in conjunction with common-law privacy on this basis. Accordingly, we will consider the applicability of other exceptions to this information.

You argue some of the information you have marked in report number 2011024432 is excepted from disclosure pursuant to the case of *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) (court finds that legitimate law enforcement interests exist to withhold certain information related to active criminal cases). In this regard, we understand you to argue the information at issue is excepted under section 552.101 of the Government Code as information made confidential by judicial decision. However, *Houston Chronicle* did not determine the confidentiality of any information for purposes of section 552.101. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987) (confidentiality protected by section 552.101 requires express language making certain information confidential or requires that information not be released to public). Accordingly, we determine none of the information at issue may be withheld under section 552.101 in conjunction with the court's holding in *Houston Chronicle*.

As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy, which also protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate

children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find portions of report number 2011024432 contain highly intimate or embarrassing information of no legitimate public concern. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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 held section 552.102(a) excepts 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*, 354 S.W.3d 336. In this instance, the marked birth dates pertain to private citizens. Therefore, we conclude the city may not withhold the marked birth dates in report number 2011024432 under section 552.102(a).

You also raise section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the driver's license number you have marked, and the additional information we have marked, under section 552.130. We note, however, the issuing state of a driver's license is not motor vehicle record information for purposes of section 552.130. Thus, the city may not withhold the driver's license issuing state you have marked under section 552.130.

In summary, to the extent the city maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in report number 2011024432 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the driver's license number you have marked, and the additional information we have marked in report number 2011024432, under section 552.130 of the Government Code. The remaining information must be released.[2]

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[2]We note the remaining information includes a social security number. 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).

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,

Sean Opperman

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 465411

Enc. Submitted documents

c: Requestor
(w/o enclosures)