



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 26, 2012

Mr. B. Chase Griffith  
Counsel for the Town of Flower Mound  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-15333

Dear Mr. Griffith:

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# 467440.

The Flower Mound Police Department (the "department"), which you represent, received a request for all records pertaining to a named individual, to include information pertaining to the named individual's arrest on April 23, 2011. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law 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 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the individual's right to privacy. However, we find the part of the request seeking information pertaining to a specified incident involving the named individual's arrest on April 23, 2011, does not implicate the named individual's privacy interests. You have submitted information pertaining to this specified arrest. Therefore, the department may not withhold information relating to this specified arrest under common-law privacy as part of the named individual's compiled criminal history. However, to the extent the department maintains other law enforcement records that depict 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.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, "[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(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Accordingly, the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test previously discussed. Common-law privacy also protects the types of information considered 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. 540 S.W.2d at 683. In addition, 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license and a motor vehicle title or registration issued by an

agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records other than those pertaining to the named individual's arrest on April 23, 2011, that depict 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. The department must withhold (1) the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note the remaining information contains social security numbers. 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 under the Act. Gov't Code § 552.147(b).

Ref: ID# 467440

Enc. Submitted documents

c: Requestor  
(w/o enclosures)