



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2012-18946

Dear Ms. Kretz:

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# 476840 (PIR No. W021554).

The Fort Worth Police Department (the "department") received a request for information involving a named individual, including records of a specified arrest. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. You claim section 552.101 in conjunction with 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 a private citizen's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *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).

In this instance, the requestor seeks access to law enforcement records involving a named individual, including records of a specified arrest. To the extent the requestor seeks access to unspecified records involving the individual, the request requires the department to compile the individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent the department maintains any unspecified records that depict the individual as a suspect, arrestee, or criminal defendant, the department must withhold any such records under section 552.101 of the Government Code in conjunction with common-law privacy. As the request for records of the specified arrest does not require the department to compile criminal history information, the request for those records does not implicate the named individual's privacy interests, and therefore the records of the specified arrest may not be withheld on privacy grounds under section 552.101.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. You claim section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code title 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We find the remaining information at issue does not involve a juvenile suspect or offender. *See* Fam. Code § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of section 58.007(c) of the Family Code.

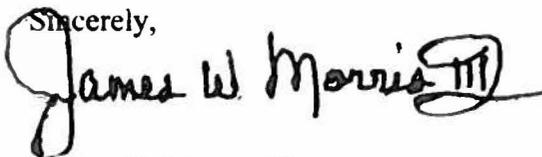
We note the remaining information includes a driver's license number. Section 552.130 of the Government Code exempts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.¹ See Gov't Code § 552.130(a)(1). The department must withhold the driver's license number we have marked under section 552.130 of the Government Code.

In summary, the department must withhold (1) any records it maintains that depict the named individual as a suspect, arrested person, or criminal defendant, other than the records of the specified arrest, under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the marked driver's license number under section 552.130 of the Government Code. The rest of the submitted 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 476840

Enc: Submitted documents

c: Requestor
(w/o enclosures)

¹This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).