



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2012

Chief Gregory L. Grigg
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536-4942

OR2012-20003

Dear Chief Grigg:

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# 473562 (Deer Park PD Request #236).

The Deer Park Police Department (the "department") received a request for police records pertaining to the requestor's father. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim.

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 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. *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. *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 requires the department to compile unspecified law enforcement records concerning the requestor's father. We find this request for unspecified law enforcement records implicates this individual's right to privacy. Accordingly, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy.

However, you state the requestor provided the department with a power of attorney over his father. Thus, the requestor may be acting as the authorized representative of his father. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Section 552.229(a) provides consent for release of information available under section 552.023 must be in writing and signed by the person or the person's authorized representative. *Id.* § 552.229(a). Thus, under section 552.023, with proper authorization from the individual with the privacy interest, the requestor in this case would have a right of access to information that would ordinarily be withheld to protect his father's common-law privacy. Therefore, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy, unless the department receives proper authorization for release from the individual with the privacy interest.¹ However, if the department receives proper authorization for release from the individual with the privacy interest, the requestor has a special right of access to the compilation of his father's criminal history, to the extent it exists, and it may not be withheld under section 552.101 in conjunction with common-law privacy. In that instance, we will consider your remaining arguments against disclosure.

Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*, which included 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. *Indus. Found.*, 540 S.W.2d at 683. This office has also 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 No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we agree portions of the information at issue are highly intimate and embarrassing and of no legitimate

¹In that instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure.

public concern. However, as noted above, the requestor may be the authorized representative of the individual whose private information is at issue. If the requestor is the individual's authorized representative, then he has a right of access to the information that would ordinarily be withheld to protect his father's privacy interests. See Gov't Code §§ 552.023, .229; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is acting as his father's authorized representative, the department may not withhold any portion of the requested information under section 552.101 in conjunction with common-law privacy.

You also raise section 552.108(a)(1) of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the information at issue would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not state the requested information pertains to an ongoing criminal investigation or prosecution. Furthermore, you have failed to explain how release of the requested information would interfere in some way with the detection, investigation, or prosecution of crime. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108(a)(1), the department may not withhold any of the requested information under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state, or another state or country. Gov't Code § 552.130(a)(1). However, we note this exception protects personal privacy. Thus, if the requestor is the named individual's authorized representative, the requestor has a right of access under section 552.023 of the Government Code to the individual's driver's license number, and the department may not withhold that information under section 552.130 of the Government Code. See *id.* § 552.023; ORD 481 at 4.

In summary, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy, unless the department receives proper authorization for release from the individual with the privacy interest. If the department receives proper authorization for

release from the individual with the privacy interest, the department must release the requested information to the requestor.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 473562

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note in that event, because the requestor would have a right of access to information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.