



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2013

Mr. Matthew B. Cross  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-08099

Dear Mr. Cross:

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# 487693 (City ID# 13-1026-2346/PL# 165698).

The El Paso Police Department (the "department") received a request for all information pertaining to a named individual. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because it does not pertain to the named individual. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information, which we have marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd).

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov't Code* § 411.082(2)(B). The requestor asks for all information held by the department concerning a named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, you have submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy 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; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the information at issue, we find it does not contain information that is confidential under constitutional privacy. Therefore, the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See Gov't Code* § 411.089(b)(1). The information at issue contains Federal Bureau of Investigation ("FBI") numbers that constitute

CHRI generated by the FBI. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code.<sup>1</sup> Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

*Id.* § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and under section 552.130 of the Government Code. The department must release the remaining responsive information.<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.

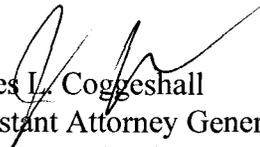
---

<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

<sup>2</sup>We note the submitted 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.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 487693

Enc. Submitted documents

c: Requestor  
(w/o enclosures)