



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2013

Mr. James McKechnie
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2013-09554

Dear Mr. McKechnie:

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# 489482 (Wichita Falls City ID# 160).

The Wichita Falls Police Department (the "department") received a request for any records involving the requestor and a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. 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. 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.

This request, which requires the department to compile unspecified law enforcement records concerning the requestor and the other named individual, implicates the right to privacy of the requestor and the other named individual. However, we note the requestor has a special right of access under section 552.023 of the Government Code to her own information that would otherwise be withheld to protect her privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, information relating to the requestor may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. However, to the extent the department maintains any law enforcement records depicting the named individual who is not the requestor 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. We note you have submitted information that does not list the named individual who is not the requestor as a suspect, arrestee, or criminal defendant. Accordingly, we will consider your arguments against disclosure of this information.

You also raise common-law privacy for this information. 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, the records at issue pertain to the requestor's own medical information. Accordingly, pursuant to section 552.023, the requestor also has a right of access to this information. *See* Gov't Code § 552.023(b).

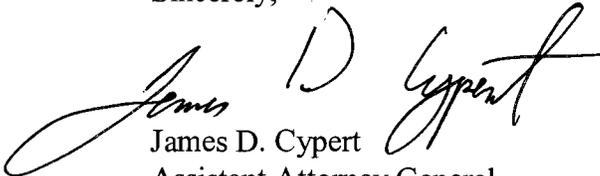
The submitted information additionally contains two CR-3 accident report forms subject to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. Section 550.065 provides that, except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Thus, the department must withhold the submitted CR-3 accident report forms under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

In summary, to the extent the department maintains any information that lists the named individual who is not the requestor as a suspect, arrestee, or criminal defendant, that information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.¹ The department must withhold the two CR-3 accident report forms under section 552.101 in conjunction with section 550.065 of the Transportation Code. The remaining information must be released.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,



James D. Cypert
Assistant Attorney General
Open Records Division

JDC/ac

Ref: ID# 489482

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure under section 552.108 of the Government Code.

²We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. Therefore, if the department receives another request for this same information from a different requestor, it must again seek a ruling from this office.