



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2013

Mr. Steven E. Meyer
Assistant City Attorney
Legal Division
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2013-17038

Dear Mr. Meyer:

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# 500916 (Arlington Reference No. 12126).

The Arlington Police Department (the "department") received a request for a specified incident report. 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 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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that 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.

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Section 552.130 protects privacy interests. We have marked information subject to section 552.130. However, we note the requestor is the spouse of one of the individuals whose motor vehicle record information we have marked. Thus, the requestor may have a right of access to his spouse's motor vehicle record information. *See id.* § 552.023(a) ("person or a person's authorized representative has 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 public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to his spouse's motor vehicle record information pursuant to section 552.023, and this information may not be withheld from him under section 552.130. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the requestor's spouse's motor vehicle record information, which we have marked, under section 552.130. The remaining motor vehicle record information we have marked pertains to an individual other than the requestor's spouse, and the department must withhold this information under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of his spouse, then the department

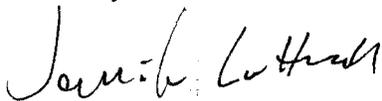
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

must withhold the requestor's spouse's motor vehicle record information, which we have marked, under section 552.130 of the Government Code. The department must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 500916

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains the requestor's driver's license information, to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023(a). Open Records Decision No. 481 at 4 (1987). As previously noted, section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by subsection 552.130(a) without the necessity of requesting a decision under the Act. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the requestor's driver's license information without the necessity of requesting a decision under the Act.