



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2014

Mr. Daniel Ortiz
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-04731

Dear Mr. Ortiz:

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# 517341 (El Paso# 1301-26-3932).

The El Paso Police Department (the "department") received a request for all reports and records involving two named individuals, including two specified cases. You claim the submitted 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 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 courthouses 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Part of the request at issue requires the department to compile unspecified criminal history records concerning the individuals named in the request, and thus, implicates the named individuals' right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting either of the named individuals 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.

However, the requestor also seeks reports related to two specified incidents. This portion of the request does not require the department to compile unspecified records. Additionally, you have submitted records that do not list either of the named individuals as a suspect, arrestee, or criminal defendant. Accordingly, this information does not implicate the privacy interests of the named individuals and may not be withheld as a compilation of the individuals' criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. Nonetheless, some of this information is made confidential under sections 552.101, 552.1175 and 552.130 of the Government Code, which we must address.¹

The remaining information contains two crash reports completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the department is required to release a copy of an accident report only to a person who provides the agency with two or more pieces of information specified by the statute. In this case, the requestor has not provided the department with the required information. Accordingly, the department must withhold the accident reports we marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "criminal

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

investigators of the United States as described by article 2.122(a), Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(7).

We marked information pertaining to a deceased United States Marshals Service agent that is not held by the department in an employment capacity. We note the protection afforded by section 552.1175 generally does not lapse at death, as it is intended to protect the privacy of both the individual and the individual’s family members. However, because the protections of dates of birth and social security numbers under section 552.1175 are intended solely to protect the privacy of the individual, those protections lapse at death. *See Moore*, 589 S.W.2d at 489; *see also* Attorney General Opinions JM-229 (1984), H-917 (1976). Accordingly, the department must withhold the information we marked under section 552.1175 if the agent at issue was a criminal investigator of the United States as described by article 2.122(a) of the Code of Criminal Procedure and elected to restrict access to his information in accordance with section 552.1175(b). However, the department may not withhold the marked information under section 552.1175 if the agent was not a criminal investigator of the United States as described by article 2.122(a), or if he did not elect to restrict access to his information in accordance with section 552.1175(b).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)–(2). Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

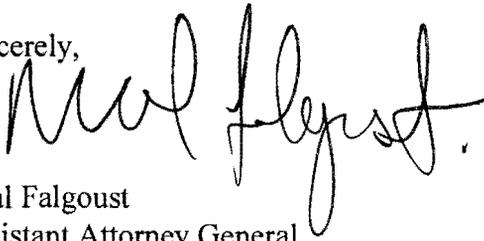
In summary, to the extent the department maintains unspecified records that depict either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the crash reports we marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. The department must withhold the information we marked under section 552.1175 of the Government Code if the agent at issue was a criminal investigator of the United States as described by article 2.122(a) of the Code of Criminal Procedure and elected to restrict access to his information in accordance with section 552.1175(b). The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information.²

²The remaining information contains social security numbers. Section 552.147 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. *See* Gov’t Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N" and a long, sweeping underline.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 517341

Enc. Submitted documents

c: Requestor
(w/o enclosures)