



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2012

Ms. Paula M. Rosales  
Assistant District Attorney  
Dallas County Criminal District Attorney's Office  
133 North Riverfront Boulevard LB-19  
Dallas, Texas 75207-4399

OR2012-01979

Dear Ms. Rosales:

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# 445124.

The Dallas County District Attorney's Office (the "district attorney") received a request for information related to a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note the district attorney did not comply with his deadline under section 552.301(e) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request, the information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You state the district attorney received the present request for information on November 18, 2011; therefore, the district attorney's fifteen-business-day deadline under section 552.301(e) was December 13. You submitted the information at issue by United States mail meter-marked December 19. See Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the district attorney did not comply with section 552.301, and the information at issue is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The district attorney's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. See Open Records Decision No. 586 (1991). In failing to comply with section 552.301, the district attorney waived section 552.108 and may not withhold any of the requested information under that exception. Because your claims under sections 552.101, 552.130, and 552.1325 of the Government Code can provide compelling reasons for non-disclosure, we will consider whether the district attorney must withhold the requested information under any of those exceptions.

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. This exception 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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. *United States 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). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

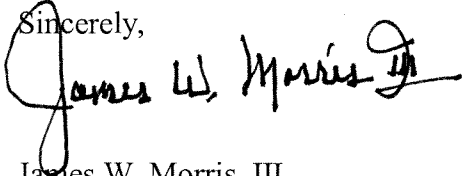
The requestor seeks access to "every file involving [a named individual] as a defendant." Thus, this request for unspecified law enforcement records requires the district attorney to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent the district attorney maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the district attorney must

withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make this determination, we need not address the other exceptions you claim.

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](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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 445124

Enc: Submitted documents

c: Requestor  
(w/o enclosures)