



February 4, 2015

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-02214

Dear Mr. Trevino:

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# 552666 (City Request No. W038375).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified incident. You state the department released the majority of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 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. This section 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we

note the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov’t Code § 411.082 (2)(B)* (criminal history record information does not include driving record information). Additionally, we note the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 in conjunction with common-law privacy.

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. However, we find none of the remaining information to be highly intimate and embarrassing and of no legitimate public interest. Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. *Gov’t Code § 552.130(a)(2)*. However, section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Thus, section 552.130 is not applicable to the deceased individual’s driver’s license number. However, the remaining motor vehicle record information is generally excepted from public disclosure under section 552.130 of the Government Code.

We understand you to assert the requestor may have a right of access to some of the information at issue under section 730.007(a) of the Transportation Code. *See Gov’t Code § 552.130(b)*; *Transp. Code § 730.007(a)* (personal information obtained in connection with

motor vehicle record may be disclosed under certain circumstances). We note that chapter 730 is applicable to an "agency . . . that compiles or maintains motor vehicle records." Transp. Code § 730.003(1). The department is not an agency as defined by section 730.003(1). Therefore, chapter 730 does not apply to the department. Accordingly, we conclude the requestor does not have a right of access to this information pursuant to chapter 730 of the Transportation Code.

We note, however, the requestor may be the authorized representative of the administrator of the deceased individual's estate. In that event, he would have a special right of access to the motor vehicle record information of the deceased individual's estate pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987). Accordingly, if the requestor is acting as the authorized representative of the administrator of the deceased individual's estate, then he has a right of access to the motor vehicle record information pertaining to the deceased individual's estate 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 the administrator of the deceased individual's estate, then the department must withhold the motor vehicle record information we have marked pertaining to the deceased individual's estate under section 552.130 of the Government Code. In either case, the department must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."¹ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the department must withhold the insurance policy number we have marked under section 552.136 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. The department must withhold the information we have marked under section 552.130 of the Government Code; however, if the requestor is acting as the authorized representative of the administrator of the deceased individual's estate, the department must release the motor vehicle record information pertaining to the deceased individual's estate to this requestor.

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

The department must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The department must release the remaining information.

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 that reads "Megan G. Holloway". The signature is written in a cursive style with a large, sweeping flourish at the end.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 552666

Enc. Submitted documents

c: Requestor
(w/o enclosures)