



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2015

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-12008

Dear Ms. Brown:

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# 567693 (Plano Reference No. ANDP032515).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some information to the requestor. You claim a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b). Nevertheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider your claimed exception for the submitted information. See *id.* §§ 552.007, .302, .352.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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, the department has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions to disclosure have been raised, the department must release the remaining information.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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

²We note some of the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the department receives another request for this information from a different requestor, the department should again seek a decision from this office.

Ref: ID# 567693

Enc. Submitted documents

c: Requestor
(w/o enclosures)