



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2015

Ms. Sarah R. Martin
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2015-13967

Dear Ms. Martin:

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# 573908 (Arlington Police Department Ref. No. 21389).

The Arlington Police Department (the "department") received a request for all information related to non-ambulatory emergency calls involving a named individual. You state you will release some information to the requestor. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts "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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. 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. Govt Code § 411.082(2)(B)* (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to persons current involvement in the criminal justice system).

The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual 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, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant or that pertains to routine traffic violations. This information does not constitute part of a criminal history compilation and may not be withheld under section 552.101 on that basis.

You assert the information at issue contains information subject to common-law privacy. This office has concluded some kinds of medical information are highly intimate or embarrassing and not of legitimate public concern. *See Open Records Decision No. 455* (1987). Upon review, we find some of the information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. You have not demonstrated that any of the remaining information is confidential under common-law privacy; therefore, you may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130. Upon review, we find the information we have marked consists of motor vehicle record information. However, we note section 552.130 protects personal privacy. In this instance, it is not clear whether a portion of the information at issue belongs to the requestor. As such, the requestor may have a right of access to a portion of the marked information, and we must rule conditionally. *See id.* § 552.023(a) ("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."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, to the extent the marked information belongs to the requestor, the requestor has a right of access under section 552.023 to the marked information, and the department must release this information to the requestor. To the extent the marked information does not belong to the requestor, the department must withhold it under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual 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. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked does not belong to the requestor, the department must withhold this information under section 552.130 of the Government Code. The remaining information must be released.

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

²The 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).

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 "Ramsey Abarca". The signature is written in a cursive style with a large, stylized initial 'R'.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 573908

Enc. Submitted documents

c: Requestor
(w/o enclosures)