



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-16916

Dear Ms. Henry:

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# 620250 (ORR# PROM051116).

The Plano Police Department (the "department") received a request for all records pertaining to a named individual since a specific date. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request requires the department to compile unspecified law enforcement records concerning the individual named in the request. Thus, the request 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. We note, however, the department has submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate the individual's right to privacy. Accordingly, the department may not withhold this information as a compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

The information at issue, however, is also subject to common-law privacy. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the information at issue reveals that the requestor knows the identity of the individual involved as well as the nature of the incidents. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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.

¹As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 620250

Enc. Submitted documents

c: Requestor
(w/o enclosures)