



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2016-21630

Dear Mr. Gates:

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# 628168 (Midland ORR# 20023).

The Midland Police Department (the "department") received a request for all records pertaining to a named individual during a specified time period. The department states it has provided some of the requested information to the requestor, including information released pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2). You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

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." *Id.* § 552.101. Section 552.101 of the Government Code 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. *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.

The present request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 628168

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As noted above, we understand, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department has released any information to which the requestor would have a right of access under section 411.087(a)(2) of the Government Code.