



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2016

Mr. Richard A. McCracken
Assistant City Attorney
Office of the City Attorney
City of Forth Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-23002

Dear Mr. McCracken:

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# 630324 (PIR No. W053842).

The Fort Worth Police Department (the "department") received a request for records related to a named individual. You claim the 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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. 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 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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present requests seeks any offense or arrest report concerning a named individual. Thus, the request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the right to privacy of the named individual. To the extent the department maintains law enforcement records listing 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.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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

¹We note the requestor is a representative of the Federal Aviation Administration. However, the requestor does not indicate he has a statutory right of access to the requested information. *See Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.- Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle).

Ref: ID# 630324

Enc. Submitted documents

c: Requestor
(w/o enclosures)