OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 21, 2003

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2003-0813A

Dear Ms. DeLuca:

This office issued Open Records Letter No. 2003-0813 (2003) on February 6, 2003. We have examined that ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on February 6, 2003. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179850.

The City of College Station (the "city") received a request for documents related to a certain capital murder case. You state that some of the responsive information has been released to the requestor. You state, however, that the city has withheld information that is excepted from public disclosure pursuant to section 552.130 of the Government Code in accordance with previous determinations of this office. *See* Open Records Letter Nos. 2002-0465 (2002), 2002-0053 (2002), 2002-2022 (2002), 2001-5847 (2001), and 2001-5574 (2001); *see also* Open Records Decision No. 673 (2001). You also contend, however, that the remaining information coming within the scope of the request, a representative sample of which you submitted to this office, is excepted from required disclosure pursuant to section 552.101 of the Government Code.[1]

[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You argue that information pertaining to the purchase of a handgun is excepted from disclosure under section 552.101 in conjunction with section 411.192 of the Government Code. Subchapter H of chapter 411 of the Government Code concerns licensure for carrying a concealed handgun. Sections 411.192 and 411.193 govern the release of all information maintained by the Department of Public Safety (the "department") concerning the licensure of individuals to carry a concealed handgun. Section 411.192 provides:

> The department shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. The department shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee. The department shall notify a license holder of any request that is made for information relating to the license holder under this section and provide the name of the person or agency making the request. This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.

Gov't Code § 411.192. Section 411.193 further states:

> The department shall make available, on request and payment of a reasonable fee to cover costs of copying, a statistical report that includes the number of licenses issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder.

Gov't Code § 411.193. After carefully reviewing your arguments and the submitted information, however, we find that you have not established that the department maintains the records under subchapter H. *See* Gov't Code § 411.192. Accordingly, none of the submitted information is made confidential under section 411.192 of the Government Code, and you may not withhold it on this basis.

You next argue that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with common-law and constitutional privacy.[2] The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters.

The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common-law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has applied privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976), as authority, this office held that those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure;" and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. Open Records Decision No. 185 (1978). The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; *see* Open Records Decision No. 430 (1985) (list of inmate visitors protected by constitutional privacy of both inmate and visitors).

In the present case, the information that identifies family members of an inmate who was executed appears in investigation documents. We find that this information is of legitimate concern to the public. Therefore, this information is not confidential under section 552.101 of the Government Code based on privacy. We also find that release of the identity of the

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[2]Section 552.101 also encompasses the doctrines of common-law and constitutional privacy.

victim's family members does not implicate the common-law or constitutional privacy rights of those family members, and you may not withhold this information on these grounds. *Cf.* Open Records Decision No. 432 (1985) (relative of deceased person may maintain action only for invasion of their right of privacy.)

We note that some of the submitted information is criminal history record information ("CHRI") subject to section 552.101. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note that the definition of criminal history record information does not include driving record information. *See* Gov't Code § 411.082(2)(B).

For the information not covered by chapter 411, subchapter F of the Government Code, we address your arguments under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code. Section 730.004 of the Transportation Code provides:

> Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 – 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

> (6) "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. The term does not include:
>
> > (A) information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or
> >
> > (B) information contained in an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(6). Section 730.004 applies only to "personal information," which does not include "information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status." *See* Transp. Code § 730.003(6). After carefully reviewing the information, we find that this information is not "personal information." Accordingly, we find that the city may not withhold any of the submitted information under chapter 730 of the Transportation Code.

Next, we note that social security numbers in the submitted information may be confidential under federal law. A social security number is excepted from required public disclosure under section 552.101 of the Act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, which we have marked, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

You next argue that the submitted documents contain information excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318(c) of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a

population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code § 772.401, *et seq.* You represent to this office that section 772.318 is applicable to the emergency communication district at issue. You also state that the submitted numbers and addresses "were supplied by a service supplier under a computerized 911 service." Accordingly, we agree that the callers' addresses and phone numbers are excepted from public disclosure based on section 552.101 in conjunction with section 772.318 of the Health and Safety Code, and you must withhold them on this basis.

We next note that the submitted information contains Texas driver's license numbers. Section 552.130 provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

The city must withhold the Texas driver's license numbers that we have marked under section 552.130.

Finally, we note that the documents contain information made confidential under section 552.136. Section 552.136 provides as follows:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
>
> > (1) obtain money, goods, services, or another thing of value; or
> >
> > (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

> (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code §552.136. We have marked the information that the city must withhold under section 552.136. As we decide this issue under section 552.136, we do not address your assertions under section 552.101 with respect to the credit card numbers.

In summary, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Social security numbers in the submitted information may be confidential under federal law. The city must withhold from disclosure the callers' addresses and telephone numbers in Exhibits C-36 through C-56 under 772.318 of the Health and Safety Code. We have marked Texas driver's license numbers the city must withhold under section 552.130. Finally, we have marked account numbers that the city must withhold from disclosure under section 552.136. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

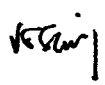
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
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VGS/sdk

Ref: ID# 1759850

Enc: Submitted documents

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