



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2007

Mr. Dan Meador  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2007-04372

Dear Mr. Meador:

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# 276195.

The Texas Department of State Health Services (the "department") received a request for all information related to the licensure of a named individual. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Criminal history record information ("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. However, in this instance none of the information you have marked constitutes CHRI generated by the NCIC or TCIC.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *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 demonstrated. *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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which a governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that marked names and contact information in the submitted documents reveal the identities of individuals who reported to the department alleged violations of section 601.101 of the Occupations Code and section 143 of chapter 25 of the Administrative Code. *See* Occ. Code § 601.101 (requiring a radiologic technologist to maintain certification); *see also* TAC §§ 143.14(c)(14), (18), 143.6(d)(1)(e) (defining professional misconduct for radiologic technologists). You state that the alleged violations reported are within the purview of the department's enforcement authority and indicate the identities of the individuals are not known by the subject of the complaints. We note the alleged violations at issue carry administrative, civil, and criminal penalties. *See* Occ. Code § 601.402; *see also* TAC §§ 43.14(a). Upon review of the submitted documents, we conclude that you may withhold the information that we have marked under section 552.101 in conjunction with the

informer's privilege. You have failed to explain how the remaining information you have marked could reveal the identity of an informer, and thus, section 552.101 is not applicable to this information.

Next, you assert that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which excepts from disclosure information relating to a Texas motor vehicle operator's license or driver's license. Gov't Code § 552.130(a)(1). Therefore, we agree that the department must withhold the Texas driver's license information you have marked under section 552.130.

In summary, you must withhold the criminal history compilation information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. You may withhold the identifying information marked under section 552.101 in conjunction with the informer's privilege. You must withhold the driver's license information marked under section 552.130 of the Government Code. The remaining information must be released.<sup>1</sup>

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline,

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<sup>1</sup>We note that the remaining information contains social security numbers. The Act permits a governmental body to withhold social security numbers without seeking a ruling from this office. Gov't Code § 552.147(b).

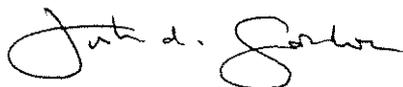
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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. 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 276195

Enc. Submitted documents

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