



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2007

Chief Don Hatcher  
Leander Police Department  
P.O. Box 319  
Leander, Texas 78646-0319

OR2007-11783

Dear Chief Hatcher:

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# 289744.

The Leander Police Department (the "department") received a request for information involving a specified address. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in

an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We find that some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. That information, which we have marked, falls within the scope of section 261.201(a). As you do not indicate that the department has adopted a rule that governs the release of the marked information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”<sup>2</sup> Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See id.* § 411.089(b). We have marked CHRI that the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a

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<sup>1</sup>We note that if the Texas Department of Family and Protective Services has created a file on this case, the child’s parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

<sup>2</sup>We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2).

person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). You seek to withhold, on privacy grounds, an allegation that a named individual is a sex offender. The submitted information further reflects that the individual is not listed on the database of registered sex offenders maintained by the Texas Department of Public Safety (the “DPS”). We note that even though it may be intimate or embarrassing, information is not protected by common-law privacy if it is a matter of legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 579 at 7 (1990). Because the DPS’s database of registered sex offenders is available to the public, we believe that whether a particular individual is, in fact, a sex offender is a matter of legitimate public interest. *See* Crim. Proc. Code art. 62.005. We also note that section 552.101 does not encompass the doctrine of false-light privacy, which is concerned with whether information would place a person in a false light in the public eye. *See* ORD 579 at 7-8 (attorney general could not conclude that legislature intended for statutory predecessor to Gov’t Code § 552.101 to encompass doctrine of false-light privacy). We therefore conclude that the department may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “the requested information (305181) falls within the 552.108(a)(1) exception[.]” You also state that “[t]he material in Attachment B contains investigative and police methods in this pending investigation.” We note that the remaining information is related to more than one police matter. Moreover, having reviewed the submitted call-for-service records, police reports, and other information, we are unable to locate any information whose identifying number is 305181. We are therefore unable to conclude that any of the remaining information is excepted from disclosure under section 552.108 of the Government Code, and the department may not withhold any of the remaining information under that exception.

You also raise section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an

agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1), (3). We have marked Texas driver's license and personal identification information that the department must withhold under section 552.130. Because section 552.130 protects personal privacy, the requestor has a special right of access to his own Texas driver's license information under section 552.023 of the Government Code, and that information may not be withheld under this exception. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>3</sup>

In summary: (1) the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the marked CHRI must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; and (3) the marked Texas driver's license and personal identification information must be withheld under section 552.130 of the Government Code.<sup>4</sup> The rest of the submitted information must be released.

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).

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<sup>3</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

<sup>4</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

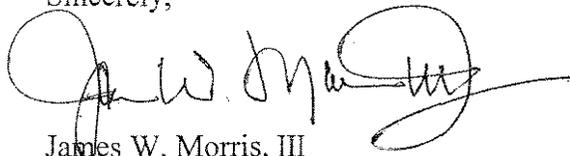
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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, 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 289744

Enc: Submitted documents

c: Mr. Matthew Sells  
13914 Layne Loop  
Leander, Texas 78641  
(w/o enclosures)