



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 2, 2007

Ms. Lynne Wilkerson  
General Counsel  
Bexar County Juvenile Probation Department  
235 East Mitchell Street  
San Antonio, Texas 78210-3845

OR2007-12850

Dear Ms. Wilkerson:

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# 290698.

The Bexar County Juvenile Probation Department (the "department") received a request for six categories of information regarding the requestor, including a copy of the requestor's personnel file, any complaints filed against the requestor, and the results of investigations regarding the requestor. You state that some of the requested information is being released to the requestor. You also state that the department has no responsive information regarding a portion of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses chapter 411 of the Government Code. 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 the CHRI

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

it generates. *See 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* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. However, we note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov’t Code § 411.082(2)(b) (definition of CHRI does not include driving record information). We also note that an individual’s current involvement in the criminal justice system, including active warrant information, does not constitute criminal history information for purposes of section 552.101. We have marked the information in Exhibits B and C that constitutes CHRI generated by TCIC and NCIC and is confidential under section 411.083.<sup>2</sup> Accordingly, the criminal history record information we have marked in Exhibits B and C must be withheld under section 552.101 of the Government Code. However, no portion of the remaining information constitutes CHRI for the purposes of chapter 411, and therefore none of the remaining information may be withheld on that basis.

We next note that some of the submitted information in Exhibit C includes the requestor’s fingerprints. Section 552.101 encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). Section 560.002 states, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” Gov’t Code § 560.002(1)(A). Thus, the requestor has a right of access to her own fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department must release the requestor’s fingerprints, which we have marked, pursuant to section 560.002 of the Government Code.

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<sup>2</sup>We note that the requestor can obtain her own CHRI from DPS. Gov’t Code § 411.083(b)(3).

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(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 this 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 this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find that the information in Exhibits E and F consists of files, reports, records, communications, videotapes, and working papers used or developed in an investigation under chapter 261 of the Family Code. *See* Fam. Code §§ 261.103(a)(3)-(4) (suspected child abuse or neglect shall be reported to state agency that operates, licenses, certifies, or registers facility in which alleged abuse or neglect occurred or to agency designated by court to be responsible for protection of children), .301(a)-(b) (designated agency or responsible state agency shall investigate report of abuse or neglect), .405 (alleged abuse or neglect in juvenile justice program or facility shall be reported to and investigated by Texas Juvenile Probation Commission). You do not inform this office that the department has adopted a rule that governs the release of this type of information, and we thus presume that no such rule exists. Accordingly, we conclude that Exhibits E and F are confidential under section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code.<sup>3</sup>

Finally, section 552.101 also encompasses the common-law right of privacy, which protects information if it (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information

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<sup>3</sup>As our ruling on this issue is dispositive, we do not address your remaining argument for this information.

indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, the department must withhold the information that we have marked in Exhibit D under section 552.101 in conjunction with common-law privacy.

In summary, in conjunction with section 552.101 of the Government Code, the department must withhold: (1) the criminal history record information we have marked in Exhibits B and C under chapter 411 of the Government Code; (2) the information in Exhibits E and F under section 261.201 of the Family Code; and (3) the information we have marked in Exhibit D under section 552.101 in conjunction with common-law privacy. The remaining submitted information must be released to the requestor.<sup>4</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

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<sup>4</sup>We note that the requestor has a right of access pursuant to section 552.023 of the Government Code to information in the submitted documents that would otherwise be excepted from release under the Act. *See* Gov't Code § 552.023(a) ("person or person's authorized representative has special right of access, beyond the right of the general public, to information held by governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). But should the department receive another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Allan D. Meeseey  
Assistant Attorney General  
Open Records Division

ADM/eeg

Ref: ID# 290698

Enc. Submitted documents

c: Ms. Rachel Rodriguez  
7230 Stillbrook  
San Antonio, Texas 78238  
(w/o enclosures)