



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2007

Ms. Sandra Gentry  
Records Supervisor  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2007-16601

Dear Ms. Gentry:

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# 297469.

The Baytown Police Department (the "department") received two requests from the same requestor for two specified missing person reports. You claim that the requested 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." Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center 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, but 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.* §§ 411.090-411.127. 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. We have marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.<sup>1</sup>

Section 552.101 also encompasses article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. For purposes of article 63.017, “clearinghouse” is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety (“DPS”). *Id.* arts. 63.001(7), 63.002(a). The remaining information consists of missing person reports that were created by the department. These department reports are not clearinghouse records for purposes of article 63.017; therefore, the department may not withhold these reports under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), 63.002(a).

Section 552.101 also encompasses the doctrine of 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). 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. 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 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

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<sup>1</sup>As we are able to resolve this under chapter 411, we do not address your argument to withhold this information.

Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked information that is confidential under common-law privacy and that the department must withhold under section 552.101.

To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and common-law privacy. The department must release the remaining information.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

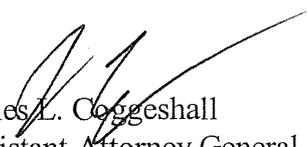
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 297469

Enc. Submitted documents

c: Mr. Eliodoro Zapata, Jr.  
2107 New York Street  
Baytown, Texas 77520  
(w/o enclosures)