



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2008

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2008-11456

Dear Mr. Gorfida:

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# 319413.

The Richardson Police Department (the "department") received a request for a specific police report. You claim that 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. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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 Texas Department of Public Safety (the "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 the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127.¹ Upon review, we find that the information we have marked constitutes CHRI and is confidential under section 411.083. Therefore, the information we have marked must be withheld under section 552.101 of the Government Code.² However, none of the remaining information constitutes CHRI for the purposes of section 411.083. Therefore, no portion of the remaining information may be withheld on that basis.

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). 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. U.S. 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. We agree that portions of the submitted information are highly embarrassing and not of legitimate public interest. We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy. We note that the requestor has a special right of access to his own private information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

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, or a personal identification document issued by an agency of this state. *Gov't Code* § 552.130. This exception protects personal privacy and therefore the requestor has a right of access to his own Texas driver's license and personal identification information, which we have marked for release. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). However, the remaining information you have marked must be withheld under section 552.130.

¹ We note that the statutory definition of CHRI does not encompass driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See Gov't Code* § 411.082(2)(B).

² We note that the requestor can obtain his own CHRI from the DPS. *See Gov't Code* § 411.083(b)(3).

In summary, with the exception of the information we have marked for release, the department must withhold: (1) the marked information under section 552.101 in conjunction with common-law privacy; and (2) the information you have marked under section 552.130. The remaining 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 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). If the governmental body does not file suit over 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,

A handwritten signature in black ink, appearing to read "Chris Schulz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/mcf

Ref: ID# 319413

Enc. Submitted documents

c: Mr. Jose A. Velasco
705 South Spring Creek Drive
Richardson, Texas 75081
(w/o enclosures)