



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2009

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-02110

Dear Ms. Champion:

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# 335157.

The City of Victoria (the "city") received a request for all police reports involving a specified address from May 1, 2008 to the present. You state the city will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered your arguments and reviewed the submitted information.

We note the submitted information is subject to section 552.022(a) of the Government Code. Section 552.022(a) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). In this instance, the submitted documents reflect they are part of concluded investigations made by the city's police department. Accordingly, the information must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the

¹Although you raise section 552.101 of the Government Code in conjunction with the attorney work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Government Code or expressly confidential under other law. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure is ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” TEX. R. CIV. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the information at issue, which relates to criminal cases. Therefore, the city may not withhold the submitted information under rule 192.5 of the Texas Rules of Civil Procedure. We note, however, that sections 552.101 and 552.130 of the Government Code are “other law” for the purposes of 552.022(a)(1).² Therefore, we will consider whether these exceptions are applicable to the submitted information.

Section 552.101 excepts from public 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 is made confidential by statute. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the submitted information constitutes CHRI generated by TCIC and NCIC. The city must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

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

²The Office of the Attorney General will raise section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Furthermore, 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). We also find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you claim portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code. The remaining information must be released.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

³We note the information being released 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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jordan Hale".

Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 335157

Enc. Submitted documents

cc: Requestor
(w/o enclosures)