



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 24, 2009

Mr. Gregory Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2009-03800

Dear Mr. Alicie:

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# 338940.

The Baytown Police Department (the "department") received three requests from the same requestor for three specified incident reports. You state that you will withhold the social security numbers that you have highlighted in green pursuant to section 552.147.<sup>1</sup> You claim that portions of the submitted information are 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. This section encompasses information protected by other statutes. 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 Texas 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

---

<sup>1</sup>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. Gov't Code § 552.147.

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 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, a portion of the information you have highlighted in purple in report numbers 2007-54666 and 2005-39594 constitutes CHRI. The department must withhold this information pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. However, the remaining information you have highlighted in purple, which we have marked, does not constitute CHRI. Therefore, the information we have marked is not confidential under chapter 411 of the Government Code and may not be withheld under section 552.101. As you raise no further exceptions against the disclosure of the information we have marked, it must be released to the requestor.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the request and the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in report number 2002-16828. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold report number 2002-16828 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

This office has also found that medical information or information indicating disabilities or specific illnesses is 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). Upon review, we conclude that the information you have highlighted in yellow in report number 2007-54666 is intimate or embarrassing and of no legitimate public interest. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have highlighted in purple in report numbers 2007-54666 and 2005-39594 under section 552.101 in conjunction with chapter 411 of the Government Code. The department must withhold report number 2002-16828 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have highlighted in yellow in report number 2007-54666 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

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

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 338940

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)