



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-07983

Dear Ms. Smith:

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# 345656 (OR 09-0686).

The Department of Public Safety (the "department") received a request for information related to the department's sex offender web site, including information pertaining to a named individual. 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.

Initially, we note that, among other things, the requestor seeks answers to several factual questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the department has made a good faith effort to do so.

Next, 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. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential

under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). The department must withhold Attachment A, which constitutes CHRI, under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.106 of the Family Code. Section 58.106 provides in part:

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;
- (2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;
- (3) to a juvenile justice agency;
- (4) to the Texas Youth Commission and the Texas Juvenile Probation Commission for analytical purposes; and
- (5) to the office of independent ombudsman of the Texas Youth Commission.

Fam. Code § 58.106. You inform us that the information in Attachment C was “generated as a result of an entry in the Juvenile Justice Information System (JJIS).” However, we note

that by its plain language, section 58.106 only makes confidential information “*contained* in the [JJIS].” *Id.* (emphasis added). You do not inform us, and it does not otherwise appear to this office, that the information in Attachment C is itself contained in the JJIS. Accordingly, the department may not withhold the information in Attachment C under section 552.101 of the Government Code in conjunction with section 58.106. *See* Fam. Code § 58.106.

However, we note that Attachment C is subject to the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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 also found that common-law privacy applies to certain information regarding juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Upon review, we find that the information in Attachment C is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold Attachment C under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you claim the information in Attachment B is confidential under section 552.130 of the Government Code. This section provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We find that Attachment B contains information relating to a Texas driver’s license or a personal identification document issued by the department. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code. However, the remaining information does not relate to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration for purposes of section 552.130, and none of it may be withheld on that basis.

In summary, (1) the department must withhold Attachment A under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (2) the department must withhold the information in Attachment C under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the department must withhold the information we have marked in Attachment B under

section 552.130 of the Government Code. The remaining information in Attachment B must be released.¹

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

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 345656

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the information that must be 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.