



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-12773

Dear Ms. Aguilar:

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# 356397.

The Corpus Christi Police Department (the "department") received a request for ten categories of information related to a specified incident. You claim that some of the requested information is not subject to the Act. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, you inform us that a portion of the submitted information, which you have marked, "was obtained pursuant to a grand jury subpoena or at the direction of the grand jury" and is being held by the department "as an agent of the grand jury." You have submitted a copy of the subpoena for our review. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4

¹ We note, and you acknowledge, that a portion of the submitted information is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the department is not required to release this information in response to the request.

(1988) (defining limits of judiciary exclusion). We therefore conclude that the submitted grand jury subpoena and the information gathered in response to this subpoena are in the custody of the department as an agent of the grand jury and are not subject to the Act.

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 the doctrine of common-law 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). This office has found that 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. You assert that a portion of the submitted information contains a compilation of an individual's criminal history. Upon review we find that you have failed to explain how the information at issue constitutes a compilation of an individual's criminal history for purposes of *Reporters Committee*. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 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 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 chapter 411, subchapter F. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we agree that portions of the submitted information,

which we have marked, consist of CHRI which must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, we find that none of the remaining information constitutes CHRI for the purpose of chapter 411. Therefore, the department may not withhold any portion of the remaining information on that basis.

Section 552.101 also encompasses Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. See *id.* at 2. You assert that the City of Corpus Christi is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You assert that the telephone number and address you have marked in the submitted information were furnished by a 9-1-1 service supplier. Based on your representations, we conclude that the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See Gov’t Code, § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You seek to withhold portions of the submitted information, which you have marked, under section 552.108(a)(1). You state that the information at issue relates to an active criminal case that is pending investigation or prosecution. Based upon this representation, we conclude that the release of the information you have marked under section 552.108 would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code.²

We note that the remaining information contains Texas motor vehicle record information. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130(a)(1)-(2). Thus the department must withhold the information we have marked under section 552.130.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the grand jury records you have marked are records of the judiciary and are not subject to disclosure under the Act. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department may withhold the information you have marked under section 552.108 of the Government Code. The department must withhold the information we have marked 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 356397

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the remaining information 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.