



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Mr. Arthur Provenghi
Assistant County Attorney
El Paso County Courthouse
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-13954

Dear Mr. Provenghi:

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# 357340.

The El Paso County Sheriff's Office (the "sheriff"), received two requests for information relating to a specified car accident. You state the sheriff will release certain information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.108, 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 Article 20.02 of the Code of Criminal Procedure. Article 20.02(a) provides that "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define "proceedings" for purposes of subsection (a). However, when construing article 20.02 of the Code of Criminal Procedure, the types of "proceedings" Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.); *see also Stern v. State*, 869 S.W.2d 614, 621 (Tex. App.—Houston [14th Dist] 1994, writ denied)

(stating that anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret); *In re Grand Jury Matter*, 682 F.2d 61, 64 (3rd Cir. 1982) (Third Circuit Court of Appeals explained that disclosure of information obtained by governmental body during its independent investigation that is later presented to grand jury does not violate rule 6(e)). The court in *Stern* stated, “[t]he requirement of secrecy should be imposed only to the extent that it contributes to the effectiveness of the grand jury as that institution carries out its investigative and screening functions.” *Id.* 869 S.W.2d at 623.

You state the submitted CR-3 supplement form in Exhibit B contains a reference to possible criminal conduct by one of the drivers and that Exhibit C contains requests made by the sheriff to the grand jury to subpoena certain records in this case. Upon review, however, we find that you have not explained how the information in Exhibits B and C falls within the categories of information that Texas courts have construed as “proceedings” for the purposes of article 20.02 of the Code of Criminal Procedure. Therefore, we find the sheriff may not withhold any of the information in Exhibits B and C under section 552.101 in conjunction with article 20.02 of the Code of Criminal Procedure.

The submitted information in Exhibit B includes a CR-3 accident supplement form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which deems accident reports completed pursuant to chapter 550 privileged and confidential. *See id.* § 550.065(b). However, section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this case, the requestors provided the sheriff with the required items of information specified by section 550.065(c)(4). Although you state the sheriff will release the initial CR-3 accident form to the requestors, you contend that the CR-3 supplement is not subject to release under section 550.065(c)(4). Upon review, however, we find that the submitted CR-3 supplement is part of the CR-3 form subject to section 550.065(c)(4). Although you contend the CR-3 supplement is excepted under sections 552.103 and 552.108 of the Government Code, we note that the exceptions found in the Act generally do not apply to information made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Thus, the sheriff must release the CR-3 supplement form, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.108(a)(1) of the Government Code 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the remaining information in Attachment B and the information in Attachment C relates to a pending criminal investigation. Based on this representation and our review, we conclude that the release of this information 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the sheriff may withhold the remaining information in Attachment B and the information in Attachment C under section 552.108(a)(1).¹

You assert that Attachment D contains confidential criminal history record information ("CHRI"). Section 552.101 also encompasses CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. See Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. See 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 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. We note that the term CHRI does not include driving record information. See Gov't Code § 411.082(2)(B). Upon review, we find that none of the information in Attachment D consists of CHRI for the purposes of chapter 411. Accordingly, the sheriff may not withhold any of this information under section 552.101 on that basis.

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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. 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. *United States 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 note that information relating to routine traffic violations is not excepted from release under common-law privacy. Cf. Gov't Code § 411.082(2)(B). In this instance, we find that there is a legitimate public interest in the

¹As our ruling is dispositive, we do not address your other arguments for this information.

criminal history information at issue. Therefore, we conclude that none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

Upon review, we find that the information we have marked in Attachments D and E is personal financial information that is excepted from disclosure under common-law privacy. However, we note the first requestor may be the insurance provider of one of the individuals involved in the accident. Thus, if this requestor is acting as the insured's authorized representative, she has a right of access to information pertaining to her insured that would ordinarily be confidential under section 552.101 in conjunction with common-law privacy. Section 552.023 of the Government Code provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See* Gov't Code § 552.023(a); *see also* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, to the extent the first requestor is the authorized representative of an individual whose private information is at issue, the sheriff may not withhold this information from the first requestor on the basis of common-law privacy. Otherwise, the sheriff must withhold the information we have marked in Attachments D and E under section 552.101 of the Government Code in conjunction with common-law privacy from the first requestor. In either case, the sheriff must withhold the information we have marked from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you indicate that the telephone number and address you have marked in Exhibit E are subject to chapter 772 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses chapter 772, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make

confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. We understand El Paso County is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You indicate that the telephone number and address you have marked in Attachment E were furnished by a 9-1-1 service supplier and, as such, are subject to section 772.318. Accordingly, the sheriff must withhold the originating telephone number and address of the 9-1-1 caller you have marked in Attachment E under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.130 of the Government Code excepts from 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. *See* Gov't Code § 552.130(a)(1), (2). We have marked Texas motor vehicle record information pursuant to section 552.130. However, we note section 552.130 protects privacy interests. To the extent the first requestor is the authorized representative of an individual whose motor vehicle record information is at issue, the sheriff may not withhold this information under section 552.130 from this requestor. To the extent the first requestor is not the authorized representative of an individual whose motor vehicle record information is at issue, the sheriff must withhold this information from the first requestor. In either case, the sheriff must withhold this information from the second requestor under section 552.130 of the Government Code. We note the remaining information you have highlighted is not protected under section 552.130 and may not be withheld on this basis.

In summary, the sheriff must release the CR-3 supplement form to the requestors pursuant to section 550.064(c)(4) of the Transportation Code. The sheriff may withhold the remaining information in Attachment B and the information in Attachment C under section 552.108(a)(1) of the Government Code. The sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and under section 552.130; however, if the first requestor is an authorized representative of an individual whose information is at issue, the sheriff must release this information to the first requestor. The sheriff must withhold the information you have marked under section 552.101 in conjunction with 772.318 of the Health and Safety Code. The remaining information must be released.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

Ref: ID# 357340

Enc. Submitted documents

c: Requestor
(w/o enclosures)