



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2009

Ms. Jordan Hale  
Assistant Attorney General  
Assistant Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2009-15426

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 362652 (PIR No. 09-26075).

The Office of the Attorney General (the "OAG") received a request for Stewart Wingo's personnel file. The requestor agreed to exclude from his request the I-9 and W-4 forms, medical records, Texas motor vehicle record information, and personal e-mail addresses. The OAG has released most of the information but asserts the remainder is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the OAG's claimed exception to disclosure and have 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 exception encompasses information other statutes make confidential, such as criminal history record information ("CHRI") generated by the National Crime

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<sup>1</sup>The OAG informs this office it redacted the employee's home address, home telephone number, social security number, and family information pursuant to section 552.117 of the Government Code. *See* Gov't Code § 552.024 (governmental body may redact section 552.117 information without necessity of requesting decision from OAG).

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 the Texas Department of Public Safety ("DPS") maintains, except 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. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we conclude the OAG must withhold the CHRI it marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Next, the OAG seeks to withhold an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states except as provided by subsection (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *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 pieces of information specified by the statute. *Id.* Here, the requestor has not provided the OAG with two of the three pieces of information. Thus, the OAG must withhold the accident report under section 550.065(b).

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *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 demonstrated. *Id.* at 681-82. 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). Upon review, we find the information the OAG marked

is highly intimate or embarrassing and not of legitimate public concern. Therefore, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction common-law privacy.

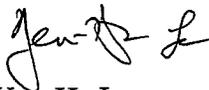
Lastly, information includes an insurance policy number. Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). “Access device” is an account number, personal identification number, electronic serial number, mobile identification number, or other instrument identifier or means of account access that alone or in conjunction with another access device may be used to 1) obtain money, goods, services, or another thing of value or 2) initiate a transfer of funds other than a transfer originated solely by paper instrument. Accordingly, the OAG must withhold the insurance policy number we marked under section 552.136.

In summary, pursuant to section 552.101 of the Government Code, the OAG must withhold 1) the accident report it marked under section 550.065 of the Transportation Code; 2) the CHRI it marked under section 411.083 of the Government Code; and 3) the private information it marked. Furthermore, the OAG must withhold the insurance policy number we marked under section 552.136. The OAG must release the rest of the submitted information.

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, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 362095

Enc: Submitted documents

c: Requestor  
(w/o enclosures)