



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2009-18127

Dear Ms. Clarke:

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# 365161.

The Lubbock County Sheriff's Office (the "sheriff") received a request for the place of arrest, contacts, and any phone calls made by three named individuals while incarcerated. You claim that the submitted information is 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 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 (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 demonstrated. *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. 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. We note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 442.082(2)(B) (criminal history record information does not include driving record information).

You claim the present request requires the sheriff to compile unspecified law enforcement records concerning the named individuals. The requestor seeks information related to the arrests of three specified individuals, but does not specify any dates of arrest. Upon review, we find the present request requires the sheriff to compile unspecified criminal history records concerning the individuals named in the request, and thus, implicates the named individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note, however, the department has submitted law enforcement records related to routine traffic violations which do not implicate the named individuals' privacy under section 552.101 of the Government Code. Because this information is not part of a compilation of the individuals' criminal history, the department may not withhold it under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by other statutes such as chapter 411 of the Government Code. 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411,

subchapter F of the Government Code. The submitted information contains CHRI that is confidential under section 411.083. Accordingly, this information, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code.

We note that the remaining information contains driver's license and motor vehicle information.¹ Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). Thus, the sheriff must withhold the Texas driver's license and motor vehicle record information we have marked under section 552.130 of the Government Code.²

In summary, with the exception of routine traffic violations, to the extent the sheriff maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy. The sheriff 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 sheriff must also withhold the Texas driver's license and motor vehicle record 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

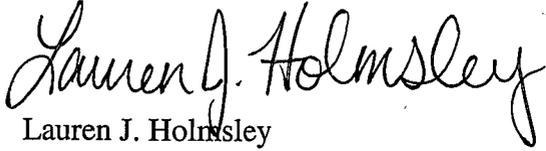
¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and license plate numbers under 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³ The information being 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. *See* Gov't Code § 552.147(b).

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,

A handwritten signature in cursive script that reads "Lauren J. Holmsley". The signature is written in black ink and is positioned above the printed name.

Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/sdk

Ref: ID# 365161

Enc. Submitted documents

c: Requestor
(w/o enclosures)