



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 21, 2010

Ms. Laura Garza Jimenez  
Nueces County Attorney  
Nueces County Courthouse  
901 Leopard Room 207  
Corpus Christi, Texas 78401-3680

OR2010-00994

Dear Ms. Jimenez:

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# 367601.

The Nueces County Sheriff's Department (the "sheriff") received a request for eight categories of information relating to a specified individual, arrest, and cause number. You inform us that the sheriff has no information responsive to parts of the request.<sup>1</sup> You state that some of the requested information either has been or will be released. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the information you submitted.

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ-dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note that the sheriff also initially raised section 552.108 of the Government Code, but has submitted no arguments in support of the applicability of that exception. Accordingly, this decision does not address section 552.108. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must submit written comments demonstrating applicability of claimed exception to information at issue).

Section 552.101 of the Government Code exempts 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 that other statutes make confidential. Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* §§ 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), 560.002 (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). We agree that the sheriff must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) 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.” *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the NCIC 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. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See id.* § 411.089(b). We note that section 411.081(b) of the Government Code allows a criminal justice agency to disclose to the public CHRI “that is related to the offense for which a person is involved in the criminal justice system.” *Id.* § 411.081(b). We also note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). Although you contend that some of the submitted information consists of CHRI, we find that none of the information in question is confidential under the federal law or subchapter F of chapter 411 of the Government Code. We therefore conclude that the sheriff may not withhold any of the submitted information on either of those grounds under section 552.101 of the Government Code.

You also raise section 552.101 in conjunction with common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and 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 this test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

We have marked information that is intimate and embarrassing and not a matter of legitimate public interest. The sheriff must withhold that information under section 552.101 in conjunction with common-law privacy. Although you also seek to withhold other information on this basis, we find that the remaining information at issue is not intimate or embarrassing and a matter of no legitimate public interest. We therefore conclude that the sheriff may not withhold any of the remaining information on privacy grounds under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1), (3). We conclude that the sheriff must withhold the Texas driver's license and personal identification numbers you have marked, along with the Texas driver's license and personal identification information we have marked, under section 552.130.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>3</sup> *Id.* § 552.147(a). The sheriff may withhold the social security number you have marked under section 552.147.

In summary: (1) the fingerprints you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy; (3) the Texas driver's license and personal identification numbers you have marked, and the Texas driver's license and personal identification information we have marked, must be withheld under section 552.130 of the Government Code; and (4) the social

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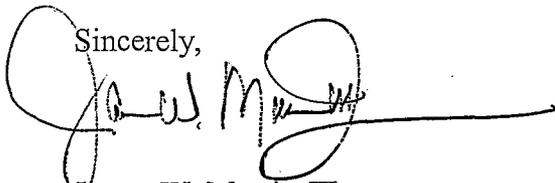
<sup>3</sup>We note that section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

security number you have marked may be withheld under section 552.147 of the Government Code.<sup>4</sup> The rest of the submitted 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](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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 367601

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that 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 a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code and a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.