ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-02167

Dear Ms. Rangel:

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# 370299.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for any information pertaining to the requestor. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit C contains the requestor's fingerprints. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted fingerprint information is confidential under section 560.003; however, the requestor has a special right of access to his fingerprint information. *See id.* § 560.002(1). Therefore, the sheriff must release the requestor's fingerprints in Exhibit C pursuant to section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under 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 section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"); 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007 provides in relevant part:

> (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
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> > (1) if maintained on paper or microfilm, kept separate from adult files and records;
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> > (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
> >
> > (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B, D, and E.
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> . . .
>
> (e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.
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> . . .
>
> (j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

> (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
>
> (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). We note that Exhibit D and incident report number 188823605 in Exhibit G relate to juvenile delinquent conduct or juvenile conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, section 58.007 applies to this information. Incident report number 188823605 in Exhibit G is confidential under this section, and, thus, the sheriff must withhold this report in its entirety under section 552.101 of the Government Code. The incident report in Exhibit D is generally subject to section 58.007, but the requestor, as the father of the juvenile suspects at issue in this report, has the right to inspect or copy this report pursuant to section 58.007(e). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted before a requestor is allowed to inspect or copy records pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Accordingly, we will address your claim under section 552.101 of the Government Code in conjunction with article 63.017 of the Code of Criminal Procedure for the information in Exhibit D.

Section 552.101 of the Government Code encompasses information that other statutes make confidential, including article 63.017 of the Code of Criminal Procedure, which provides the following:

> Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend the information in Exhibit D is confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, "clearinghouse" is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety ("DPS"). *Id.* arts. 63.001(7), 63.002(a). The information in Exhibit D consists of an incident report involving juvenile runaways that was created by the Houston Police Department. This police report is not a clearinghouse record for purposes of article 63.017. Therefore, the sheriff may not withhold Exhibit D under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), 63.002(a).

Section 552.101 also encompasses chapter 411 of the Government Code. Chapter 411 deems confidential criminal history record information ("CHRI") generated by the National Crime

Information Center or the Texas Crime Information Center. *Id.* § 411.083(a). 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). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 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. The term CHRI does not include driving record information maintained by DPS. *See id.* § 411.082(2)(B). Upon review, we agree some of the remaining information consists of CHRI that is confidential under section 411.083. Thus, the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code. However, you have not demonstrated the remaining information at issue constitutes CHRI for purposes of chapter 411. Accordingly, no portion of the remaining information may be withheld under section 552.101 on that basis.

Next, you assert that Exhibit B is excepted from disclosure under common-law privacy. Section 552.101 of the Government Code also 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that common-law privacy protects personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note that although portions of Exhibit B are generally subject to common-law privacy, the requestor is the individual to whom the private information pertains. As such, the requestor has a special right of access to private information concerning himself under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We therefore conclude that the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you assert some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating 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 note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code, and the sheriff may not withhold this information under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. We have marked Texas motor

vehicle record information in the remaining information that does not pertain to the requestor which the sheriff must withhold under section 552.130.[1]

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.[2] Gov't Code § 552.147(a). Section 552.147 is also based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to his own social security number. Additionally, if the requestor is acting as his wife's authorized representative, then the sheriff may not withhold his wife's social security number either. *See generally id.* § 552.023(b). Therefore, with the exception of the requestor's social security number, and the requestor's wife's social security number, if the requestor is acting as his wife's authorized representative, the sheriff may withhold the submitted social security numbers under section 552.147.

In summary, the marked fingerprints must be released to this requestor pursuant to section 560.002 of the Government Code. The sheriff must withhold incident report number 188823605 in Exhibit G under section 552.101 in conjunction with section 58.007 of the Family Code. The marked CHRI must be withheld under section 552.101 in conjunction with section 411.083 of the Government Code. The sheriff must withhold the information we have marked under section 552.130 of the Government Code. The sheriff may withhold social security numbers of living persons other than the requestor and his wife, if the requestor is acting as his wife's authorized representative, under section 552.147 of the Government Code. The remaining information must be released to the requestor.[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,

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[1]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 license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

[2]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.

[3]Should the sheriff receive another request for these same records from a person who would not have a right of access to this requestor's private information, the sheriff should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 370299

Enc. Submitted documents

cc: Requestor
(w/o enclosures)