



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2010-02208

Dear Ms. Lentz:

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# 370080.

The Williamson County Sheriff's Office (the "sheriff") received a request for information pertaining to a named individual and a specified criminal charge. You claim that portions of the requested information are excepted from disclosure under sections 552.101 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. 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). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Accordingly, we find a person, or the person's authorized representative, has a right of access under subsection 560.002(1)(A) to that person's biometric information. In this instance, the requestor may be the authorized representative of the individual whose biometric identifiers are at issue. Thus, if the sheriff determines the requestor is the authorized representative of the individual whose biometric identifiers are at issue, the requestor has a right of access to those biometric identifiers under subsection 560.002(1)(A), and they must be released. If, however, the sheriff determines the requestor is not the

authorized representative of the individual whose biometric identifiers are at issue, the sheriff must withhold the biometric identifiers you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* §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. Similarly, 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 Government Code chapter 411, subchapter F. We note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. Upon review, we find the information we have marked consists of CHRI the sheriff must withhold pursuant to section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. The constitutional right to privacy protects two types of interests. *See* Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common-law right to privacy; the material must concern the "most intimate aspects of human affairs." *See id.* at 5 (citing *Ramie*, 765 F.2d at 492).

In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have

a First Amendment right to do so that would be threatened if their names were released. ORD 430. Further, we recognized that inmates have a constitutional right to visit with outsiders and could also be threatened if their names were released. *See* ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors).

Upon review, we agree the information you have marked must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. However, we note the requestor may be the authorized representative of the inmate at issue. *See* Gov't Code § 552.023(b) ("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 persons privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). The information we have marked pertains solely to the requestor and the inmate at issue. Thus, if the requestor is the authorized representative of the inmate at issue, she has a right of access to the information we have marked pursuant to section 552.023 of the Government Code. To the extent the requestor is not acting as the authorized representative of the inmate at issue, the information we have marked must be withheld under section 552.101 in conjunction with constitutional privacy.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Further, this office has found that 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). This office has found that 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. Dept 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 ones criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You seek to withhold the information you have marked on the basis of common-law privacy. Upon review, we agree that the information you have marked, as well as the information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the marked information must generally be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor may be the authorized representative of the named individual, to whom the marked information pertains. *See* Gov't Code § 552.023(b); ORD 481. Thus, if the requestor is acting as the authorized representative of the named individual, then she has a right of access to the marked information pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the named individual, then the sheriff must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff must generally withhold the Texas motor vehicle information you have marked under section 552.130 of the Government Code. However, we note that section 552.130 protects privacy interests. As noted above, the requestor may be the authorized representative of the named individual. *See id.* § 552.023(b). To the extent the requestor is acting as the authorized representative of the named individual, she has a right of access to Texas motor vehicle record information pertaining to that individual, and it may not be withheld from her under section 552.130. However, the Texas motor vehicle information pertaining to other individuals must be withheld under section 552.130 of the Government Code. To the extent the requestor is not acting as the named individual's authorized representative, the sheriff must also withhold the Texas motor vehicle record information pertaining to the named individual under section 552.130 of the Government Code.

In summary, the sheriff must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code and federal law. The sheriff must withhold the information you have marked under section 552.101 of the Government Code in conjunction with constitutional privacy. The sheriff must withhold the marked Texas motor vehicle record information pertaining to individuals other than the named individual under section 552.130 of the Government Code.¹ To the extent the requestor is not acting as the named individual's authorized representative, the sheriff must also withhold: (1) the marked biometric identifiers under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the information we

¹We 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 biometric identifiers under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

have marked under section 552.101 in conjunction with constitutional privacy; (3) the information marked under section 552.101 in conjunction with common-law privacy; and (4) the named individual's Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 370080

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The information being released contains social security numbers subject to section 552.147 of the Government Code. 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. Gov't Code § 552.147. Section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to her own social security number, and may have a right of access to named individual's social security number if she is acting as his authorized representative. We note that the information being released contains confidential information to which the requestor may have a right of access. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). However, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.