



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-03297

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# 374301.

The Fort Bend County Constable, Precinct 3 (the "constable") received a request for all documents in the personnel file of the requestor's client. You claim the requested 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 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 information that other statutes make confidential, such as 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 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. The term CHRI does not include driving record information maintained by DPS. *See id.* § 411.082(2)(B). Upon review, we agree most of the information in Exhibit B consists of CHRI that is confidential under section 411.083. Thus, the constable must withhold the CHRI we have marked under section 552.101 of the Government Code.¹ However, you have failed to demonstrate 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.

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 established. *Id.* at 681-82. This office has found 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You contend the remaining information constitutes a criminal history compilation of the individual at issue and is, thus, protected under common-law privacy. Upon review, however, we find none of the remaining information constitutes a compilation of the named individual's criminal history. Consequently, the constable may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the constable must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The remaining information must be released to the requestor.²

¹We note that the requestor can obtain his client's CHRI from DPS. *See* Gov't Code § 411.083 (b)(3).

²We note that the requestor has a special right of access to some of his client's information. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). However, because such information may be confidential with respect to the general public, if the constable receives another request for this information from an individual other than this requestor, the constable must again seek a ruling from this office.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 374301

Enc. Submitted documents

c: Requestor
(w/o enclosures)