



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-03634

Dear Ms. De La Garza:

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# 373786.

The Houston Police Department (the "department") received a request for twenty four categories of information pertaining to a specified incident. 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 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 section encompasses the doctrine of common-law privacy. Common-law privacy 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. *See Industrial Found. v. Texas 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. *See id.* at 681-82. 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. *See* 540 S.W.2d at 683. You argue portions of the information relating to the specified incident must be withheld on the basis of common-law privacy. We have marked portions of the information at issue that are highly intimate or embarrassing and not of legitimate public interest. We note the submitted audio recording also contains information that is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked in the submitted reports, as well as the

corresponding information within the submitted audio recording, under section 552.101 in conjunction with common-law privacy. We note, however, that if the department lacks the technical capacity to redact the private information from the audio recording, the department must withhold the audio recording in its entirety on the basis of section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983).

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential.¹ 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* 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. 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Accordingly, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.130 of the Government Code 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). The department must withhold the Texas driver’s license and motor vehicle information we have marked under section 552.130 of the Government Code.²

In summary, the department must withhold the information we have marked in the submitted documents, as well as the corresponding information on the audio recording, under

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

²We 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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.101 of the Government Code in conjunction with common-law privacy. The department also must withhold the CHRI we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must withhold the information we have marked under section 552.130. The remainder of the submitted 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 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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 373786

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released includes social security numbers of living individuals. 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.