



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2010

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2010-03705

Dear Ms. Camp-Lee:

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# 372873.

The Round Rock Police Department (the "department"), which you represent, received a request for all records pertaining to a named individual.<sup>1</sup> You state you have released or will release some of the requested information. You claim 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.

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). We note the department has redacted social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a

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<sup>1</sup>You indicate the department sought clarification from the requestor regarding the request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147. In addition, we note the department has redacted Texas license plate and driver's license numbers. Redaction of these types of information is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009), which authorizes the withholding of ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code. However, you do not assert, nor does our review of our records indicate, that the department has been otherwise authorized to withhold the remaining Texas motor vehicle record information and driver's license information the department redacted without seeking a ruling from this office. *See id.* § 552.301(a). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See id.* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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). A governmental body must establish both prongs of this test to demonstrate the applicability of common-law privacy. *See id.* at 681-82. 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we note that information that refers to an individual solely as a victim, witness, or other involved person is not private and may not be withheld under section 552.101 on that basis.

The present request requires the department to compile unspecified law enforcement records concerning the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information wherein the named individual is not depicted as a suspect, arrestee, or criminal

defendant. This information does not constitute a compilation of the individual's criminal history and it may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

(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:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (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 Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You state that the information submitted as Exhibit D involves allegations of juvenile delinquent conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appear to apply. Therefore, Exhibit D is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.<sup>2</sup>

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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You assert that some of the remaining information contains personal financial information and criminal history information that is confidential under common-law privacy. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps) and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Also, as noted above, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *See Reporters Comm.*, 489 U.S. at 764. We note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review of the remaining information, we agree that, except where we have marked for release, the department must withhold the criminal history information you have marked in red, the financial information you have highlighted in green, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude that you have failed to demonstrate the remaining information you seek to withhold is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is excepted under section 552.130 of the Government Code, which excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor

vehicle title or registration issued by an agency of this state[.]”<sup>3</sup> *Id.* § 552.130: Accordingly, the department must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. Except where we have marked for release, the department must withhold the information you have marked in red, the information you have highlighted in green, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos.481 (1987), 480 (1987), 470 (1987).

Ref: ID# 372873

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)