



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2010

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-03788

Dear Ms. Njuguna:

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# 373137.

The City of Houston (the "city") received a request for documentation concerning individuals with restricted access at the city's Bureau of Animal Regulation and Care. You state the city is releasing some information. You claim a portion of 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 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* 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. Upon review, we find you have failed to demonstrate that any portion of the submitted information consists of CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with section 411.083.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *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. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the remaining information is not confidential under common-law privacy and it may not be withheld under section 552.101 on this basis.

We note the remaining information contains a former employee's personal information.¹ Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5* (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, the city must withhold the information we have marked to the extent that the employee timely elected under section 552.024 to keep his home address confidential.

¹The Office of the Attorney General will raise mandatory exceptions, such as sections 552.117 and 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).

Section 552.130 of the Government Code exempts 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[.]" Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the information we have marked pursuant to section 552.130.

In summary, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.117 to the extent that the employee timely elected under section 552.024 to keep his home address confidential. The city must withhold the information we marked under section 552.130.² The remaining information must be released.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 373137

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

² We note that 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 a Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision.