



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2010

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2010-03887

Dear Mr. Ohnemiller:

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# 372887.

The Midland Police Department (the "department") received a request for information pertaining to a specified report. You state the department has released some of the requested information. You indicate the department does not possess any video recordings or photographs responsive to the request.¹ You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. Criminal history record information ("CHRI") obtained from the National

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. 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). Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See* Gov't Code § 411.089(b). Although you contend that some of the submitted information consists of CHRI, we find that none of the submitted information constitutes CHRI that is confidential under the federal law or subchapter F of chapter 411 of the Government Code. We therefore conclude that the department may not withhold any of the submitted information on either of those grounds under section 552.101 of the Government Code.

We note that some of the submitted information is subject to common-law privacy, which is also encompassed by section 552.101 of the Government Code. 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. 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). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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." Gov't Code

§ 552.130(a)(1), (2). We conclude that the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.²

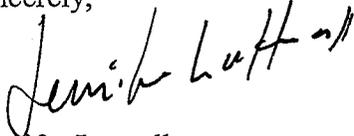
Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ *Id.* § 552.147(a). The department may withhold the submitted social security numbers under section 552.147 of the Government Code.

In summary, the department must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy and (2) section 552.130 of the Government Code. The department may withhold the submitted social security numbers under section 552.147 of the Government Code. 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

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

³We note that 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.

Ref: ID# 372887

Enc. Submitted documents

c: Requestor
(w/o enclosures)