



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2010

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2010-04193

Dear Ms. Clarke:

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# 373507.

The Lubbock County Sheriff's Office (the "sheriff") received a request for information pertaining to a specific offense committed by a named individual. 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.

Initially, we note the instant request seeks copies of mug shots, offense reports, and probable cause details pertaining to the incident at issue, but you have submitted only a single mugshot and a series of computer screen printouts consisting of booking information and two criminal case inquiries. Therefore, to the extent any of the additional information responsive to the request existed on the date the sheriff received the request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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.” Gov’t Code § 411.082(2). 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 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Similarly, any CHRI obtained from the Texas Department of Public Safety 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). However, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find you have failed to demonstrate any of the submitted information constitutes CHRI generated either by the TCIC or NCIC database. Therefore, no portion of the submitted information is confidential under chapter 411, and none of it may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *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 demonstrated. *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) (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). Furthermore, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

Upon review, we find the instant request does not seek a compilation of an individual’s criminal history; rather, the request is for information pertaining to a single arrest of the individual at issue for a specified offense. Such a request does not implicate the individual’s common-law right of privacy. Accordingly, the sheriff may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the submitted 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 373507

Enc. Submitted documents

c: Requestor
(w/o enclosures)