



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 1, 2010

Ms. Yvette Aguilar  
Assistant City Attorney  
Legal Department  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2010-04620

Dear Ms. Aguilar:

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# 374596.

The Corpus Christi Police Department (the "department") received a request for certified copies of all materials in the department's files pertaining to a named individual, including Case No. 0808020137. We note that you have redacted a social security number from the submitted information.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 the doctrine of common-law privacy, which protects information if it (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). This office has found that a compilation of an individual's criminal history is

---

<sup>1</sup>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.

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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual and thus implicates this individual's right to privacy. 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 such information under section 552.101 in conjunction with common-law privacy.

You have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. Furthermore, the requestor seeks information pertaining to a specified case. This information is not part of a criminal history compilation, and thus we will address your other arguments with regard to this information. Common-law privacy also includes the types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. *See* Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *Id.*; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, Case No. 0808020137 relates to a sexual assault, and you state the requestor knows the identity of the victim. Withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the department must withhold Case No. 0808020137 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, we have marked portions of the remaining submitted information that are highly intimate or embarrassing and of no legitimate public interest. The department must also withhold this information under section 552.101 in conjunction with common-law privacy.<sup>2</sup> However, no portion of the remaining information is either highly intimate or

---

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

embarrassing and of no legitimate public concern. Accordingly, no portion of the remaining submitted information may be withheld on this basis.

Section 552.101 of the Government Code 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 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. The term CHRI does not include driving record information maintained by the DPS. Gov't Code § 411.082(2)(B). Upon review, we find that none of the remaining information you have marked contains any CHRI for the purposes of chapter 411. Therefore, the department may not withhold any portion of the remaining submitted information on that basis.

You assert that portions of the remaining information are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to concluded investigations conducted by the department that did not result in a conviction or deferred adjudication as the district attorney declined to prosecute. Based on your representation and our review, we conclude that the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

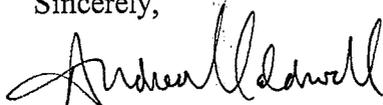
Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130.<sup>3</sup>

In summary, (1) 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; (2) the department must withhold Case Number 0808020137 in its entirety and the information we have marked under section 552.101 in conjunction with common-law privacy; (3) the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code; and (4) the department must withhold the Texas motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 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](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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

---

<sup>3</sup>We 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.

Ref: ID# 374596

Enc. Submitted documents

c: Requestor  
(w/o enclosures)