



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2010

Mr. Edward Schweningen
Assistant Criminal District Attorney
Bexar County Criminal District Attorney's Office
Cadena-Reeves Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2010-05039

Dear Mr. Schweningen:

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# 373947.

The Bexar County Criminal District Attorney's Office (the "district attorney") received two requests for all police reports and correspondence pertaining to a named individual and information relating to a named investigator.¹ Although you state you wish to release the submitted information, you state it may be excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to the request for correspondence pertaining to the named individual or information relating to the named investigation. Therefore, to the extent the district attorney maintained any information responsive to this request on the date the district attorney received the request, we assume the district attorney has already released such information. If the district attorney has not released any such information, it must do so at this time. *See* Gov't Code § 552.301(a), .302;

¹ We note that the district attorney contacted the requestor who clarified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible).

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. 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). 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. This request for unspecified “file contents” requires the district attorney to compile the named individual’s criminal history and implicates his privacy interests. However, the submitted information pertains to a candidate for the office of Bexar County Criminal District Attorney. Upon review, we find there is a legitimate public interest in this information. Accordingly, no portion of the submitted information may be withheld under section 552.101 as a compilation of the named individual’s criminal history.

Common-law privacy under section 552.101 also encompasses 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. *See* 540 S.W.2d at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the district attorney must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 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. Accordingly, the district attorney 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.

Section 552.101 also encompasses chapter 560 of the Government Code, which governs the public availability of fingerprints. Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* §§ 560.003; .001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Thus, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.107(2) of the Government Code provides that information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2).² You have submitted a copy of a court order that provides in part:

IT IS ORDERED that all documents bearing Cause No. 1999-CI-10438 . . . filed in the 57th District Court are SEALED . . . IT IS ORDERED that the documents under said cause number shall not be opened or released.

Order on Motion to Seal Court Records, 57th Dist. Ct., Bexar County, Tex., June 16, 2009. Accordingly, to the extent the court order applies to the information in Exhibit F, the information must be withheld under section 552.107(2). However, to the extent the court order does not apply to the information in Exhibit F, then section 552.107(2) is not applicable to this information and it may not be withheld on this basis.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

You also have submitted a copy of an Order of Nondisclosure. You argue, however, that the order does not apply to Cause No. 1194-CR-4925W and the documents contained in Exhibits G, H, and I. Section 552.142 of the Government Code pertains to records of certain deferred adjudications and provides:

(a) Information is excepted from [required public disclosure] if an order of nondisclosure with respect to the information has been issued under Section 411.081(d).

(b) A person who is the subject of information that is excepted from [required public disclosure] under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

Gov't Code § 552.142. Section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication for certain offenses to petition the court for an order of nondisclosure, which prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. *Id.* § 411.081(d). Under this provision, a criminal justice agency may only disclose criminal history record information that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in section 411.081(i); or the person who is the subject of the order. *Id.* In this instance, you have provided documentation showing a court issued an order of nondisclosure pursuant to section 411.081(d) prohibiting release of a specified cause number. You state the cause number in the Order of Nondisclosure is unrelated to Cause No. 1194-CR-4925W. Based on your representations and our review, we find the Order of Nondisclosure does not apply to Exhibits G, H, and I. Accordingly, Exhibits G, H, and I need not be withheld under section 552.142.

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). Accordingly, the district attorney must withhold the information we have marked pursuant to section 552.130.³

In summary, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) common-law privacy, (2)

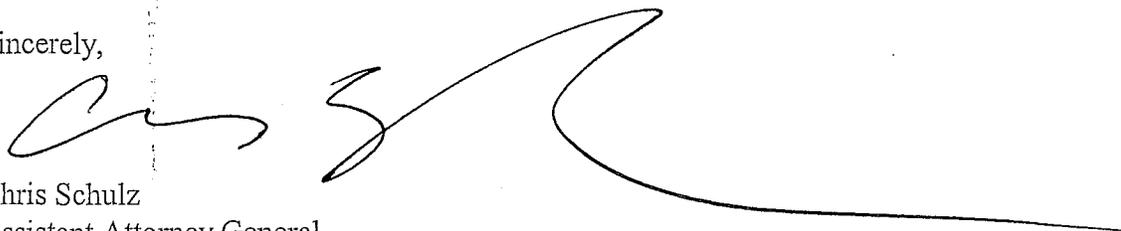
³We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license and license plate number under section 552.130 without the necessity of requesting an attorney general decision.

federal law and chapter 411 of the Government Code, and (3) section 560.003 of the Government Code. To the extent the court order applies to the information in Exhibit F, the information must be withheld under section 552.107(2). However, to the extent the court order does not apply to the information in Exhibit F, then section 552.107(2) is not applicable to this information and it may not be withheld on this basis. The district attorney must withhold the information we marked under section 552.130. The remaining information must be released.⁴

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# 373947

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁴ We note the remaining information contains a social security number. 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. *See* Gov't Code § 552.147.