



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 12, 2010

Ms. Michelle Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-05115

Dear Ms. Villarreal:

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# 375461 (City of Waco Ref. No. LGL-10-74).

The City of Waco (the "city") received a request for a specified police report. You state that you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 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. Section 552.101 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). 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.

We understand you to contend that the instant request implicates an individual's privacy as a compilation of criminal history. We note, however, the requestor has asked for a specific report. As such, we find that the request is not a request for a compilation of any individual's criminal history information and does not implicate any individual's right to privacy. Therefore, the submitted information may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find that a portion of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. The submitted information contains CHRI that is confidential under section 411.083. Thus, the city must withhold this information, which we have marked, under section 552.101 of the Government Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. A portion of the remaining information, which you have marked, consists of information acquired from a polygraph examination subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, you must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Finally, you have marked some information pursuant to section 552.130 of the Government Code, which 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). Thus, the city must withhold the Texas motor vehicle record information we have marked under section 552.130. However, the remaining information you have marked may not be withheld under section 552.130.

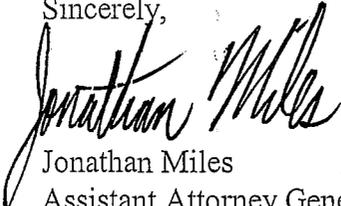
In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411,

subchapter F of the Government Code. The city must withhold the polygraph information you have marked under section 1703.306 of the Occupations Code in conjunction with section 552.101 of the Government Code. The city must withhold the motor vehicle information we have marked under section 552.130 of the Government Code.¹ The remaining information must be released.²

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 375461

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We 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 and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note that the information being released contains social security numbers. 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.