



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2010

Mr. Marc J. Schnell
Langley & Banack
Trinity Plaza II
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2010-06566

Dear Mr. Schnell:

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# 378332.

The Selma Police Department (the "department"), which you represent, received a request for certain disciplinary and personnel record information pertaining to a named officer, copies of all complaints against the named officer, and information pertaining to all arrests made by the named officer. You state some of the responsive information has been released with redactions pursuant to the previous determinations issued by this office in Open Records Decision Nos. 670 (2001) and 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹See Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301); Open Records Decision No. 684 (2009) (previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.).

Initially, we note the requestor states he does not object to the redaction of the officer's home address, social security number, telephone number, or personal family information. Accordingly, these types of information are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the requests and the department is not required to release that information in response to the request.

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 information protected by other statutes, such as 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 id.* § 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 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. Upon review, we find a portion of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 of the Government Code.

Section 552.101 also encompasses common-law privacy. Information is excepted from required public disclosure by a common-law right of privacy if the information (1) 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 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not private and may not be withheld under section 552.101 on that basis. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, this office has found there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 373 (1983). This office has also found information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). In this instance, we understand you to assert portions of the remaining information, which you have marked, consist of information about an employee that is highly intimate or embarrassing and not of legitimate concern to the public. Upon review of the remaining information, we find portions of the information at issue are highly intimate or embarrassing and not of legitimate public interest. Accordingly, we have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you have marked is not highly intimate or embarrassing or it is of legitimate concern to the public. Accordingly, no portion of the remaining information may be withheld under section 552.101 on this basis.

You seek to withhold portions of the remaining information under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, social security number, and family member information of a licensed peace officer, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² *See* Gov't Code § 552.117(a)(2). However, as noted above, the requestor states he does not object to the redaction of these types of information. You have marked information beyond the officer's home address,

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

home telephone number, social security number, and family member information. Upon review, we find the remaining information you have marked is not subject to section 552.117(a)(2), and the department may not withhold this information under section 552.117(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Upon review, we find portions of the submitted information consist of Texas motor vehicle record information. Accordingly, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold (1) the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the Texas driver's license number we have marked under section 552.130 of the Government Code; and (5) the insurance policy number we have marked under section 552.136 of the Government Code.³ 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

³We 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 insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 378322

Enc. Submitted documents

c: Requestor
(w/o enclosures)
