



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-08405

Dear Mr. Mann:

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# 382019 (Garland Identification Number GCA10-0260).

The Garland Police Department (the "department") received a request for information pertaining to a specified automobile accident. You state you have redacted a Texas driver's license number not pertaining to the requestor's client pursuant to Open Records Decision No. 684 (2009).¹ We also understand you are withholding social security numbers under section 552.147 of the Government Code.² You state the department has released some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note that 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.

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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 1202 of title 8 of the United States Code.³ Section 1202 provides in part:

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential[.]

8 U.S.C. § 1202(f). You contend that the information you marked in yellow is confidential under section 1202(f). You indicate, however, that the information in question is maintained by the department. You have not explained how or why information held by the department would qualify as a record of the Department of State or of a diplomatic or consular office of the United States for the purposes of section 1202(f). *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Therefore, as you have not demonstrated that the information in question falls within the scope of the federal statute, the department may not withhold the information you have marked in yellow under section 552.101 of the Government Code in conjunction with section 1202 of title 8 of the United States Code. *See also Medina-Hincapie v. Dep't of State*, 700 F.2d 737, 741 (D.C. Cir. 1983) ("Under section [1202(f)] the Secretary of State has no authority to disclose material to the public."); *Perry-Torres v. U.S. Dep't of State*, 404 F.Supp.2d 140, 143-44 (D. D.C. 2005) (Department of State properly withheld information relating to denial of visa application under 8 U.S.C. § 1202(f)); *Church of Scientology of California v. Dep't of State*, 493 F.Supp. 418, 423 (D. D.C. 1980) (8 U.S.C. § 1202(f) applicable to document described as "permanent record of State Department").

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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.* Section 411.083 of the Government Code deems confidential CHRI that the Texas 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

³We note that a federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

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 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). Upon review, we agree that the information we have marked consists of CHRI. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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 established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we conclude the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information you marked is intimate or embarrassing and of no legitimate public concern. Thus, the remaining information you marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must also withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. 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 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 382019

Enc. Submitted documents

c: Requestor
(w/o enclosures)