



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2010

Ms. Luz E. Sandoval Walker
Assistant City Attorney
El Paso City Prosecutor's Office
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-10557

Dear Ms. Walker:

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# 386795 (No. 2010-05-11-AG).

The El Paso Police Department (the "department") received a request for information relating to two named individuals. You state that some of the requested information has been released. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that information has been redacted from some of the submitted documents. Section 552.301 of the Government Code prescribes procedures that must be followed in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301(a), .302. Pursuant to section 552.301(e)(1)(D), a governmental body must submit the specific information at issue to this office, or submit representative samples if the information is voluminous, except to the extent that the information is the subject of a previous determination or a social security number that may be redacted pursuant to section 552.147(b) of the Government Code. *See id.* § 552.301(a), (e)(1)(D); *see also id.* § 552.147(b) (authorizing governmental body to redact living person's social security number from public release without necessity of requesting attorney general's decision under Act); Open Records Decision No. 673 (2001) (previous determinations). We note that this office recently issued a previous determination in Open Records Decision

No. 684 (2009) that authorizes all governmental bodies to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision under the Act. *See* ORD 684 at 7-8. Therefore, the Texas driver's license and license plate numbers that have been redacted from the submitted documents may be withheld on the basis of Open Records Decision No. 684. Likewise, the social security numbers that have been redacted from the submitted documents may be withheld pursuant to section 552.147(b) of the Government Code. We are not aware of any authority for the department to withhold any of the remaining information that has been redacted from the submitted documents without requesting a decision under the Act. In this instance, we are able to ascertain the nature of the redacted information; thus, we are not prevented from determining whether the information is excepted from disclosure. For future reference, however, the department should refrain from redacting any information from records that are submitted to this office in connection with a request for a decision under the Act, unless the information is encompassed by a previous determination or by section 552.147(b) or section 552.024(c) of the Government Code.¹

Next, we address your claims under section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The department raises section 552.101 in conjunction with common-law privacy, which protects information if (1) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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. 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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to unspecified law enforcement records involving the named individuals. Thus, this request requires the department to compile the individuals' criminal histories and thereby implicates their privacy interests. Therefore, to the extent that the department maintains any information that depicts either of the named individuals as a

¹Section 552.024(c), which is not applicable in this instance, authorizes a governmental body to redact the home address and telephone number, social security number, and family member information of a current or former official or employee who chooses not to allow public access to that information.

suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note that the department has submitted information that does not depict either of the named individuals as a suspect, arrested person, or criminal defendant. Thus, that information does not constitute a compilation of the individuals' criminal history and may not be withheld as such under section 552.101 and common-law privacy.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked medical information that is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information under section 552.101 in conjunction with common-law privacy.

Common-law privacy also encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked personal financial information that is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential. The department raises section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Although the department contends that section 58.007(c) is applicable in this instance, we find that none of the remaining information at issue involves a juvenile suspect or offender. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transportation Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* We have marked a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer’s accident report). In this instance, the requestor has not provided the department with two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the marked crash report under section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses federal and state laws that make criminal history record information (“CHRI”) confidential. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions

and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

We note that sections 552.130 and 552.136 of the Government Code also are applicable in this instance.² Section 552.130 excepts from disclosure information relating to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Id. § 552.130(a)(1)-(3). The department must withhold the Texas driver’s license, motor vehicle and personal identification information we have marked under section 552.130.

Section 552.136 of the Government Code provides in part that “[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 that an insurance policy number is an access device for the purposes of this exception. *See id.* § 552.136(a) (defining “access device”). The insurance policy numbers we have marked must be withheld under section 552.136.

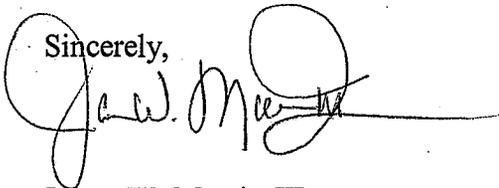
²Unlike other exceptions to disclosure under the Act, this office will raise sections 552.130 and 552.136 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

In summary: (1) any information maintained by the department that depicts either of the named individuals as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the marked medical and personal financial information must be withheld under section 552.101 in conjunction with common-law privacy; (3) the marked crash report must be withheld under section 550.065(b) of the Transportation Code; (4) the marked CHRI must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (5) the marked Texas driver's license, motor vehicle and personal identification information must be withheld under section 552.130 of the Government Code; and (6) the marked insurance policy numbers must be withheld under section 552.136 of the Government Code.³ 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/tp

³As previously noted, Open Records Decision No. 684 is a previous determination issued by this office that authorizes all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number and a Texas license plate number under section 552.130 and an insurance policy number under section 552.136.

⁴We note that the remaining information includes social security numbers. As previously noted, 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.

Ref: ID# 386795

Enc: Submitted documents

c: Requestor
(w/o enclosures)