



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2010

Mr. William P. Chesser
City Attorney
City of Brownwood
P.O. Box 1389
Brownwood, Texas 76804

OR2010-11678

Dear Mr. Chesser:

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# 389016.

The Brownwood Police Department (the "department") received a request for all records relating to a named individual. You claim 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 submitted information.

Initially, we note a portion of the submitted information does not relate to the named individual. This information, which we have marked, is therefore not responsive to the present request. The department need not release nonresponsive information in response to this request, and this ruling will not address that 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 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). 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information).

The present request requires the department to compile unspecified records concerning the individual at issue. We find this request for unspecified law enforcement records implicates the individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, you have submitted information relating to routine traffic violations and information that does not list the individual as a suspect, arrestee, or criminal defendant. This information, which we have marked, therefore does not implicate the individual's right to privacy, and it may not be withheld as a compilation of criminal history.

Section 552.101 also encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note a portion of the submitted information relates to an investigation of child endangerment or abandonment. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for the purposes of chapter 261 of the Family Code); Penal Code § 22.041(b), (c). Thus, we find that the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such

regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information we have marked from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. 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." *Id.* § 411.082(2). 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 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. We have marked CHRI the department must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.

We note a portion of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 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). Therefore, the department must withhold the Texas motor vehicle record information we have indicated pursuant to section 552.130.²

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the CHRI we have marked under section 552.101 of

¹The 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).

²We 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 a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 389016

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released includes a social security number. Section 552.147(b) 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.