



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2010

Ms. Judith N. Benton
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-12428

Dear Ms. Benton:

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# 391224 (Waco Reference # LGL-10-801).

The Waco Police Department (the "department") received a request for arrest reports pertaining to a named individual from January 1, 2010 to the date of the request, including arrests for specified offenses. You claim that the requested 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.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that 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.

In this instance, the request is for arrest records pertaining to a named individual during a specified time period, including information pertaining to specified offenses. Thus, this request, in part, requires the department to compile the named individual's criminal history. Therefore, with the exception of the information pertaining to a specified offense, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted an arrest report, which pertains to one of the specified offenses. Because this report was specifically requested by the requestor, it does not implicate the privacy interests of the named individual and it may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. However, we will consider whether any of the information in this report is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.

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

Next, we note that you have highlighted an out of state driver's license number. Section 552.130 of the Government Code 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[.]" *Id.* § 552.130(a)(1). Section 552.130 does not apply to out of state motor vehicle

record information. Accordingly, the department may not withhold the out of state driver's license number you have marked under section 552.130.

In summary, with the exception of information pertaining to a specified offense, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The remaining information must be released.¹

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/eb

Ref: ID# 391224

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the remaining information contains a social security number. 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. Gov't Code § 552.147.