



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2010

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2010-14267

Dear Mr. Lestock:

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# 394272.

The City of Paris (the "city") received a request for the employment records of the requestor's client, a former city employee. You claim that some of 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 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 section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Accordingly, we conclude the submitted I-9 form is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system. *See* 8 U.S.C. § 1324a(b)(1)(B)-(D); 8 C.F.R. § 274a.2(b)(1)(v)(A)-(C).

The submitted information also includes a CR-3 accident report form. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the city with the requisite pieces of information specified by the statute. Accordingly, the city must withhold the CR-3 accident report under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses section 411.083 of the Government Code, which pertains to 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 state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to 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 in accordance with 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *See 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. Furthermore, 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 find that the information you seek to withhold does not constitute CHRI for chapter 411 purposes, and the city may not withhold this information on that basis.

You claim some of the remaining information is excepted from disclosure on the basis of common-law privacy, which is also encompassed by section 552.101. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82.

The type of information considered intimate and 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. *See id.* at 683. This office has 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), 545 (1990). In addition, 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that 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 excepted from release under section 552.101 in conjunction with common law-privacy. *Cf. Gov't Code* § 411.082(2)(B).

Upon review, we agree portions of the remaining information are highly intimate or embarrassing and of no legitimate public concern. Therefore, this information is generally subject to common-law privacy. However, in this instance, the requestor is an attorney representing the individual whose private information is at issue. Section 552.023 of the Government Code gives a person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See id.* § 552.023. Thus, the requestor has a special right of access to his client's information, and the city may not withhold any of the information pertaining to the requestor's client under section 552.101 in conjunction with common-law privacy. Further, we find the remaining information is not highly intimate or embarrassing or is of legitimate public concern; therefore, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a)(1). Section 552.117 also encompasses personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made.

However, section 552.117 protects personal privacy. Therefore, the requestor has a right of access to personal information concerning his client, and that information may not be withheld from him under section 552.117(a)(1). *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

We have marked information pertaining to individuals other than the requestor's client that may be subject to section 552.117. If the current and former employees at issue timely elected to withhold their personal information pursuant to section 552.024, then the city must withhold the information we have marked under section 552.117(a)(1); however, the city may only withhold the marked cellular telephone numbers if the employee at issue paid for the cellular telephone service with his own funds. The city may not withhold this information under section 552.117(a)(1) if the employees at issue did not make timely elections to keep the marked information confidential.

Portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 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. Gov't Code § 552.130(a)(1), (2). We note section 552.130 also protects personal privacy. In this instance, the requestor has a right of access under section 552.023 to his client's Texas motor vehicle information, and it may not be withheld from him pursuant to section 552.130. *See generally id.* § 552.023(b). However, the city must withhold the Texas motor vehicle information not pertaining to the requestor's client, which we have marked, under section 552.130 of the Government Code.

In summary, the submitted I-9 form is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system. The city must withhold the CR-3 accident report under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. Provided the current and former employees at issue timely elected to withhold their personal information, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the employee at issue paid for the cellular telephone service with his own funds. The city must withhold the Texas motor vehicle information not

pertaining to the requestor's client, which we have marked, under section 552.130 of the Government Code.² The remaining submitted information must be released to this requestor.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 394272

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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 I-9 forms under section 552.101 of the Government Code and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³The information being released in this instance includes information that may be confidential with respect to the general public. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.