



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 18, 2010

Ms. YuShan Chang
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-15761

Dear Ms. Chang:

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# 397040 (PIR# 17531).

The Houston Police Department (the "department") received a request for all records of complaints, audits, hearings or meetings, and sanctions against drivers or companies during a specified time period pertaining to the SafeClear tow truck program. You state the department will provide most of the requested information to the requestor. You claim portions of the submitted hearing examiner decisions are 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. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except

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. Similarly, 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. You generally claim the information you have marked is CHRI confidential under state and federal law. You have not, however, provided any arguments explaining how the marked information constitutes CHRI generated by the NCIC or TCIC, or how chapter 411 or federal law apply to the information. Consequently, we find you have failed to demonstrate how any portion of the information you seek to withhold constitutes CHRI for purposes of chapter 411 or federal law, and no portion of this information may be withheld on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

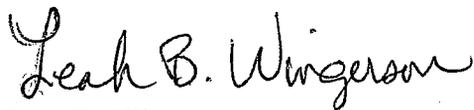
You indicate the marked information should be withheld under common-law privacy because the information constitutes compiled criminal history information. The submitted information consists of hearing examiner decisions regarding whether or not to grant applications for admission into the department's SafeClear tow truck program. The decisions include, among other things, information pertaining to the applicants' criminal histories and explanations of the circumstances surrounding those incidents. The submitted documents reflect the criminal history information was the sole issue the hearing examiners reviewed in making their final decisions regarding the program applications. Although we agree the marked information consists of the compiled criminal histories of the individuals at issue, we find the information is of legitimate public interest because it is the basis for the hearing examiners' decisions regarding whether or not to grant the applicants' admission into

the SafeClear program. Consequently, you have failed to demonstrate the applicability of common-law privacy to the information you seek to withhold, and the information may not be withheld on that basis. As you have claimed no other exceptions to disclosure, the submitted 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 397040

Enc. Submitted documents

c: Requestor
(w/o enclosures)