



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2010

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

OR2010-15767

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# 397215.

The Paris Police Department (the "department") received two requests from the same requestor for information pertaining to case number 201015002. 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.

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 261.201 of the Family Code. Section 261.201 provides in part:

(a) Except as provided by Section 261.203, the 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2), (l)(3). The submitted report reflects it was used or developed in an investigation by the department of alleged child abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this report is subject to section 261.201(a). However, the requestor is a parent of the child victim and is not alleged to have committed the suspected abuse. Accordingly, the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(3) states, however, that the identity of the party who made the report must be redacted. *See id.* § 261.201(l)(3). Therefore, the department must withhold the information that reveals the reporting party’s identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Additionally, section 261.201(l)(2) states that any information excepted from required disclosure under the

Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, because you also raise section 552.101 in conjunction with chapter 411 of the Government Code and common-law privacy, we will address your remaining arguments for the submitted report.

Section 552.101 also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found 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. However, this request does not seek a compilation of an individual's criminal history; rather, the request is for information pertaining to a specified case. Such a request does not implicate an individual's common-law right of privacy. Accordingly, the department may not withhold any of the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). 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 the 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. 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. We marked the portions of the submitted information that reflect they were generated by the NCIC or the TCIC. We conclude this information is confidential CHRI the department must

withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. Because you do not inform this office that any of the remaining information was generated by the NCIC or the TCIC, no remaining information may be withheld on the basis of chapter 411.

Portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. *Id.* § 552.130(a). We note section 552.130 does not apply to out-of-state motor vehicle record information. The department must withhold the Texas motor vehicle record information we have marked in the submitted documents under section 552.130 of the Government Code.²

In summary, the department must withhold the information we marked under: (1) section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, (2) section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, and (3) section 552.130 of the Government Code. The remaining submitted 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

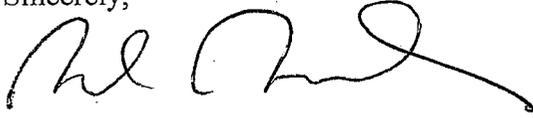
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the remaining information contains social security numbers. 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. *See* Gov't Code § 552.147. However, the requestor has a right of access to her own social security number. *See generally id.* § 552.023(b). Further, we note that because the requestor has a special right of access to information that would otherwise be confidential in this instance, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long, sweeping underline.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 397215

Enc. Submitted documents

c: Requestor
(w/o enclosures)