



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2010

Mr. C. R. Servise
Chief Deputy
Burnet County Sheriff's Office
P.O. Box 1249
Burnet, Texas 78611

OR2010-19225

Dear Mr. Servise:

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# 404471 (OR0407).

The Burnet County Sheriff's Office (the "sheriff") received a request for all reports from January, 2005 that involve a specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You represent report number 2005-01-046 was the subject of a previous request for information from the requestor at issue in the current file, as a result of which this office issued Open Records Letter No. 2010-16284 (2010). In that decision, we determined the sheriff must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the sheriff must continue to rely on Open Records Letter No. 2010-16284 as a previous determination and withhold report number 2005-01-046 from the requestor in accordance with that ruling.¹ See Open Records Decision No. 673

¹As our ruling is dispositive for this report, we need not address your claimed exceptions against its disclosure.

(2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You claim portions of report number 2005-01-049 are excepted under section 552.101 of the Government Code. Section 552.101 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 information protected by other statutes, such as section 411.083 of the Government Code. Section 411.083 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 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. Section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Additionally, CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). Upon review, we conclude the sheriff must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 and federal law. However, we find no portion of the remaining information constitutes CHRI for purposes of chapter 411, and none of it may be withheld under section 552.101 on that basis.

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 satisfied. *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. *Id.* at 683. Upon review, we have marked the portions of the report that reveal information we find to be highly intimate or embarrassing and of no legitimate public interest. The sheriff must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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. Gov't Code § 552.130(a). Therefore, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.²

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, the sheriff may withhold the social security numbers from the remaining information under section 552.147 of the Government Code.³

In summary, the sheriff must withhold report number 2005-01-046 in accordance with Open Records Letter No. 2010-16284. With respect to report number 2005-01-049, the sheriff must withhold the information we marked under: section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; section 552.101 in conjunction with common-law privacy; and section 552.130 of the Government Code. The sheriff may withhold the social security numbers in report number 2005-01-049 under section 552.147 of the Government Code. The remaining portions of this report 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,

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

³Section 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(b).

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,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 404471

Enc. Submitted documents

c: Requestor
(w/o enclosures)