



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2011

Ms. Teresa L. Presley
Records Manager
City of Frisco
7200 Stonebrook Parkway
Frisco, Texas 75034

OR2011-02394

Dear Ms. Presley:

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# 409251.

The Frisco Police Department (the "department") received a request for information related to two named individuals and a specified address, including specified incident reports. You claim that 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. This exception 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. *See 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) (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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You state, and we agree, the request in part requires the department to compile unspecified law enforcement records regarding the named individuals. We note, however, the requestor is an attorney representing the named individual to whom the submitted information pertains. Section 552.023 of the Government Code provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, in this instance, the requestor has a special right of access to his client's information. Further, the submitted information does not list the other named individual as a suspect, arrestee, or criminal defendant. Thus, the submitted information does not implicate the other individual's right to privacy. Accordingly, the department may not withhold any portion of the submitted information under section 552.101 on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* The submitted information includes crash reports that were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the department with two of the three specified items of information for either report. Therefore, the department must withhold the crash reports we have marked pursuant to section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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.* at 10-12. Section 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 criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Upon review, we find the Federal Bureau of Investigation ("FBI") number we have marked constitutes CHRI that must be withheld pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration.¹ *Id.* § 552.130(a)(1), (2). We have marked Texas motor vehicle record information that does not belong to the requestor's client. *See id.* § 552.023. Accordingly, the department must withhold this marked Texas motor vehicle record information under section 552.130.²

In summary, the department must withhold: (1) the crash reports we have marked pursuant to section 550.065(b) of the Transportation Code; (2) the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; and (3) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining 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

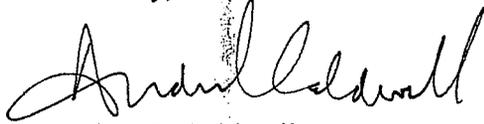
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the requestor has a special right of access to the information being released. *See* Gov't Code § 552.023. If the department receives another request for this same information, then the department should again seek a decision from this office.

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 cursive script, appearing to read "Andrea L. Caldwell".

Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 409251

Enc. Submitted documents

c: Requestor
(w/o enclosures)