



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2011

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2011-03365

Dear Ms. Middlebrooks:

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# 411064.

The Dallas Police Department (the "department") received a request for all records related to a specified investigation. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor excluded from the request social security numbers, driver's license numbers, motor vehicle titles, vehicle registrations, vehicle identification numbers, license plate information, employee identification numbers, as well as law enforcement officer cellular telephone numbers, home addresses, home telephone numbers, and family member information. Thus, any such information is not responsive to the present request for information. This ruling does not address the public availability of any information that is

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<sup>1</sup>We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

not responsive to the request, and the department is not required to release that information in response to the request.<sup>2</sup>

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 information protected by other statutes, including 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.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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. We note that 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). Accordingly, the department must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 and federal law. However, none of the remaining information you have marked is CHRI for purposes of chapter 411, and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy. Common-law privacy 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. *See Industrial Found. v. Texas 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987)

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<sup>2</sup>As our determination is dispositive for the non-responsive information, we need not address your arguments against its disclosure.

(prescription drugs, illnesses, operations, and physical handicaps). Additionally, 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). However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining information you seek to withhold is highly intimate or embarrassing and of no legitimate public concern, and it may not be withheld under section 552.101 on the basis of common-law privacy.

We note a portion of the remaining responsive information is excepted from disclosure under section 552.102(a) of the Government Code.<sup>3</sup> Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note most of the information you have marked under section 552.117(a)(2) of the Government Code is not responsive to the present request because the requestor has excluded this information from the request. However, a portion of the information you have marked under section 552.117(a)(2) does not consist of the home address, home telephone number, social security number, or family member information of a peace officer. This information, which we have marked, is responsive to the present request but is not the type of information

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

protected by section 552.117. Thus, this marked information may not be withheld under section 552.117(a)(2) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.102(a) of the Government Code. The remaining responsive 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 411064

Enc. Submitted documents

c: Requestor  
(w/o enclosures)