



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2011

Mr. John C. West  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2011-05448

Dear Mr. West:

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# 415009.

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for the requestor's job application and a copy of the OIG report involving the requestor and concerning a specified incident. We understand you do not possess the requested job application.<sup>1</sup> You state you will release a portion of the requested report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

We first address your argument under section 552.134 of the Government Code. Section 552.134 relates to information about inmates of the department and provides, in relevant part:

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d (Tex. Civ. App.—San Antonio 1978, writ dismissed).

<sup>2</sup>Although you raise section 552.101 in conjunction with section 411.084 of the Government Code, based on your arguments we understand you to raise section 552.101 in conjunction with section 411.083 of the Government Code, as this is the proper section for the substance of your arguments.

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides, in part, that

[n]otwithstanding . . . Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

*Id.* § 552.029(8). The OIG claims the submitted information consists of records about department inmates. However, we find the submitted information pertains to an investigation of a department employee's conduct, and, therefore, is not "about an inmate" for purposes of section 552.134. Thus, the submitted information may not be withheld in its entirety under section 552.134. The submitted records, however, include inmate identifying information. This information is generally subject to section 552.134. Further, we find section 552.029 is not applicable to the inmate identifying information. Accordingly, the OIG must withhold the information we have marked under section 552.134 of the Government Code.

You claim portions of the remaining information are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with that governmental body's law enforcement or prosecutorial interests. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has concluded, however, if the custodian of records does not have a law enforcement or prosecutorial interest in the information, it must provide a representation from the governmental body with the law enforcement interest that release of the information will interfere with that agency's law enforcement interest. *See Open Records Decision Nos. 474 at 4-5 (1987)*, (where incident involving allegedly criminal conduct is still under active

investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). The information you seek to withhold consists of a report provided to the OIG from an outside law enforcement agency. You state this report contains information on the activities of that outside law enforcement agency and that the documents relate to an open investigation. You do not provide any arguments explaining how release of the information at issue would interfere with any specific criminal investigation being conducted by the OIG or how release would otherwise interfere with the law enforcement interests of your office. Furthermore, you have not submitted a representation from any other governmental body explaining how release will interfere with that agency's law enforcement or prosecutorial interests. Consequently, you have failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue. Accordingly, none of the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

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. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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 Department of Public Safety ("DPS") maintains, except that 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. Upon review, we find the information we have marked is CHRI obtained from DPS that must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find the OIG has failed to demonstrate that any of the remaining information consists of CHRI for purposes of chapter 411. Therefore, none of the remaining information is confidential under section 411.083, and the OIG may not withhold it under section 552.101 on that ground.

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. The types of information considered intimate or embarrassing by

the Texas Supreme Court in *Industrial Foundation* include 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. In addition, this office has found that an individual's criminal history when compiled by a governmental body may be protected under common-law privacy. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Determinations under common-law privacy must be made on a case-by-case basis. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 373 at 4 (1983). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the OIG must withhold this information under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration issued by an agency of this state or to a personal identification document issued by a state agency or a local agency authorized to issue an identification document. Gov't Code § 552.130(a)(1)-(3). Therefore, the OIG must withhold the information we have marked under section 552.130 of the Government Code.<sup>3</sup> We note, however, the requestor has a right of access to his own Texas driver's license number. *See id.* § 552.023(a) (person has special right of access, beyond right of general public, to information held by governmental body that relates to that person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, this requestor's information may not be withheld under section 552.130 of the Government Code.

In summary, the OIG must withhold the information we have marked under section 552.134 of the Government Code. The OIG must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The OIG must withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>4</sup>

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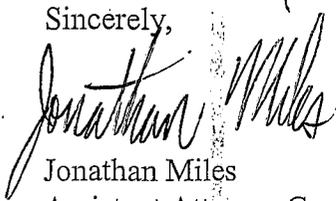
<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies, authorizing the withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>Because this requestor has a right of access under section 552.023 of the Government Code to information being released that may be confidential with respect to the general public, if the OIG receives another request for this particular information from a different requestor, then the OIG should again seek a decision from this office.

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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 415009

Enc. Submitted documents

c: Requestor  
(w/o enclosures)