



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2011

Ms. Doris Berry  
Assistant District Attorney  
Collin County  
2100 Bloomdale, Suite 20004  
McKinney, Texas 75071

OR2011-08373

Dear Ms. Berry:

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# 420351.

The Collin County District Attorney's Office (the "district attorney") received a request for all records related to a named individual, including a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.132, and 552.1325 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district attorney did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). While the district attorney raised sections 552.101 and 552.103 within the ten-business-day time period as required by subsection 552.301(b), the district attorney did not raise sections 552.132 and 552.1325 until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See id.* §552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, mandatory exceptions to disclosure cannot be waived by a governmental body. *See* Gov't Code § 552.352; Open Records Decision No. 574 at n.4 (2001) (mandatory exceptions). Because sections 552.132 and 552.1325 are mandatory

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<sup>1</sup>Although you initially raised section 552.117 of the Government Code, you have not provided arguments to support that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

exceptions, we will consider the district attorney's arguments under sections 552.132 and 552.1325, as well as the district attorney's timely-raised claims under sections 552.101 and 552.103.

Next, we note the submitted information is subject to section 552.022 of the Government Code, which provides:

(a) . . . the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains records that are part of a completed investigation, which fall within the purview of section 552.022(a)(1). Therefore, the district attorney must release the information that is part of the completed investigation, unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception that a governmental body may waive. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of section 552.022. Thus, the district attorney may not withhold any of the submitted information under section 552.103 of the Government Code. However, sections 552.101, 552.132, and 552.1325 are "other law" that makes information confidential for purposes of section 552.022. Additionally, we note some of the submitted information is subject to sections 552.130 and 552.137 of the Government Code, which are also "other law" for purposes of section 552.022. Therefore, we will consider these exceptions as they relate to 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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center (the "TCIC") 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 of the Government Code deems confidential CHRI the 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. Section 411.083(b)(1) and 411.089(a) of the Government Code 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). We note CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes CHRI, which must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. We find some of the remaining information you seek to withhold as CHRI relates to driving record information. Further, the Criminal History Reporting Form you seek to withhold is not CHRI generated by the NCIC or the TCIC. Therefore, the district attorney may not withhold this remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

The district attorney also seeks to withhold CHRI under article 60.03 of the Code of Criminal Procedure, which provides:

(a) Criminal justice agencies . . . are entitled to access to the data bases of the Department of Public Safety, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations. The access granted by this subsection does not grant an agency . . . the right to add, delete, or alter data maintained by another agency.

...

(c) . . . a criminal justice agency . . . may [not] disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation.

Crim. Proc. Code art. 60.03(a), (c). The remaining information the district attorney seeks to withhold pursuant to article 60.03 does not constitute CHRI. Therefore, the district attorney may not withhold it under section 552.101 in conjunction with article 60.03 of the Code of Criminal Procedure.

Section 552.101 also 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. *Id.* at 681-82. The type of information considered highly intimate or 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. This office has found common-law privacy protects some kinds of

medical information or information indicating disabilities or specific illnesses. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, the 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 courthouses 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). Upon review, we find the information we have marked constitutes highly intimate or embarrassing information that is of no legitimate concern to the public. The district attorney must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate and embarrassing and of no legitimate concern to the public. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on the basis of privacy.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). The district attorney must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

Section 552.132 of the Government Code provides:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

*Id.* § 552.132(b), (d). The submitted information is held by the district attorney, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of the district attorney who made an election in accordance with section 552.132(d). Therefore, the district attorney may not withhold any of the submitted information under section 552.132 of the Government Code.

Section 552.1325 of the Government Code provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

*Id.* § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). Upon review, we find the remaining information at issue does not include a victim impact statement for purposes of section 552.1325. Therefore, the district attorney may not withhold any of the remaining information under section 552.1325 of the Government Code.

Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Upon review, we find the e-mail address we have marked is not a kind excluded by subsection (c). Therefore, the district attorney must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless its owner has affirmatively consented to its release.

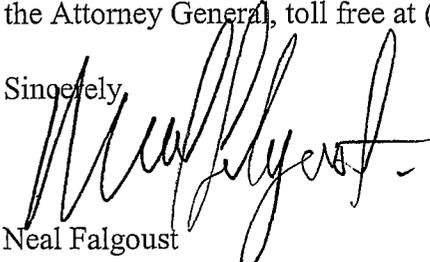
In summary, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the

Government Code and common-law privacy. The district attorney must withhold the information we have marked under section 552.130 of the Government Code and section 552.137 of the Government Code.<sup>2</sup> The remaining information must be released.<sup>3</sup>

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 420351

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note this office has issued Open Records Decision No. 684 (2009), 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 and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the remaining information contains a social security number. 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 under the Act.