



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-09434

Dear Ms. McClellan:

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# 422972 (PIR No. 2011-3396).

The Dallas Police Department (the "department") received a request for an internal affairs division report involving a named officer. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note the submitted information includes sexual offender registration 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 information other statutes make confidential, including article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

to the Texas Department of Public Safety (the “DPS”) sex offender registration database: the person’s full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver’s license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense of which the person was convicted; the age of the victim; the date of conviction; the punishment received; an indication of whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), held or sought by the person; an indication of whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the DPS. *See* Crim. Proc. Code art. 62.051(c); *see also id.* art. 62.001(11) (as added by Act of June 19, 2009, 81st Legislature, R.S., ch. 755, § 2, 2009 Tex. Sess. Law Serv. 1905, 1906) (defining “online identifier”). This information is public information, with the exception of the person’s social security number, driver’s license number, telephone number, the identification of any online identifier established or used by the person, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the department must withhold or release the sex offender registration information we have marked in accordance with article 62.005(b) of the Code of Criminal Procedure.²

Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under section 552.101 of the Government Code in conjunction with federal and state laws: CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”³ Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not

²As the department must withhold or release this information in accordance with article 62.005(b) of the Code of Criminal Procedure, we need not address your claims for some of the marked information under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We note the exceptions to disclosure found in the Act are generally not applicable to information another statute makes public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

³We note the statutory definition of CHRI does not encompass driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2).

be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We have marked CHRI the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information if (1) it 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 Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy protects certain types of personal financial information. Financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (“In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities”), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Except for the information encompassed by article 62.005 of the Code of Criminal Procedure, we agree the department must withhold the information you have marked, along with the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Except for the information encompassed by article 62.005 of the Code of Criminal Procedure, we agree the department must withhold the personal information relating to a peace officer you have marked, along with the additional information we have marked, under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Except for the information encompassed by article 62.005 of the Code of Criminal Procedure, we agree the department must withhold the Texas driver's license and motor vehicle information you have marked, along with the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides in part that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device for purposes of section 552.136. You state the employee identification number you have marked is the same number used for city credit union bank accounts. We therefore agree the department must withhold the insurance policy and employee identification numbers you have marked under section 552.136 of the Government Code.

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.⁴ *Id.* § 552.147(a). Except for the information encompassed by article 62.005 of the Code of Criminal Procedure, we agree the department may withhold the information you have marked under section 552.147 of the Government Code.

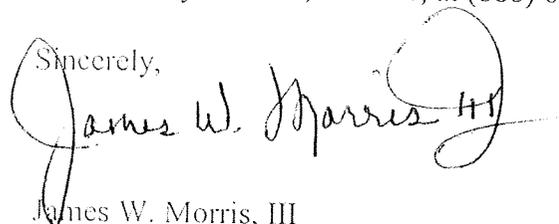
In summary, the department (1) must withhold or release the sex offender registration information we have marked in accordance with article 62.005(b) of the Code of Criminal Procedure; (2) must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (3) must withhold the information you have marked, except for the information encompassed by article 62.005 of the Code of Criminal Procedure, and the additional information we have marked, under section 552.101 in conjunction with common-law privacy; (4) must withhold the information you have marked, except for the information encompassed by article 62.005 of the Code of Criminal Procedure, and the additional information we have marked, under section 552.117(a)(2) of the Government Code; (5) must withhold the Texas driver's license and motor vehicle information you have marked, except for the information encompassed by article 62.005 of the Code of Criminal Procedure, and the additional information we have marked, under section 552.130 of the Government Code; (6) must withhold the insurance policy and employee identification numbers you have

⁴We note 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.

marked under section 552.136 of the Government Code; and (7) except for the information encompassed by article 62.005 of the Code of Criminal Procedure, may withhold the information you have marked under section 552.147 of the Government Code.⁵ The department must release the rest of the submitted information.

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 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 422972

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁵We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code.