



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2011

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
PO Box 1431
Wichita Falls, Texas 76307

OR2011-11132

Dear Mr. Scott:

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# 425758 (Wichita Falls ID# 188).

The Wichita Falls Police Department (the "department") received a request for three specified incident reports. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.115 of the Government Code. We have considered the claimed exceptions 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 section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 laws with respect to the CHRI it generates. *See 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 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find none of the submitted information constitutes CHRI for purposes of chapter 411 of the Government Code. Thus, the department may not withhold any of the submitted information on that basis.

Section 552.101 of the Government Code also encompasses the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You contend the address and telephone number of the subject of the submitted reports are protected by common-law privacy. We note this office has concluded public disclosure of an individual's home address and telephone number is not an invasion of privacy. *See* Open Records Decision No. 554 at 3 (1990); *see also* ORD 455 at 7 (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). We find you have not demonstrated the address and telephone number at issue are highly intimate or embarrassing. Therefore, the department may not withhold that information under common-law privacy. However, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information may be withheld on that basis.

Section 552.108 of the Government Code provides, in relevant part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You claim the submitted information is excepted under section 552.108 and quote the language of subsections 552.108(a)(1) and 552.108(a)(2). However, you state both that the information relates to a potential criminal investigation and that the incidents at issue concluded in a result other than conviction or deferred adjudication. Because you have raised contradictory subsections and assert inconsistent arguments for their applicability, we find you have failed to demonstrate section 552.108 is applicable to the submitted information. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the department may not withhold the submitted information under either subsection 552.108(a)(1) or subsection 552.108(a)(2) of the Government Code.

You assert a portion of the submitted information is protected by section 552.115 of the Government Code. Section 552.115(a) provides that “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Section 552.115 applies only to information maintained by the Bureau of Vital Statistics or local registration official. The department is not the Bureau of Vital Statistics or a local registration official; therefore, the department may not withhold any of the submitted information under section 552.115 of the Government Code. *See Open Records Decision No. 338* (1982).

We note the remaining information contains driver's license numbers protected by section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure

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

“information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” 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). Therefore, the department must withhold the information we have marked under section 552.130.² As you raise no additional exceptions to disclosure of the remaining information, it must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/tf

Ref: ID # 425758

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing the withholding of ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.