



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2011

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2011-11733

Dear Mr. Moore:

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# 427003 (TAR 11.073).

Tarleton State University (the "university"), a component of the Texas A&M University System, received a request for ten categories of information from all offense or incident reports made between January 1, 2009, and December 31, 2010. You state the university will provide the requestor with access to most of the requested information. You state the university is withholding Texas driver's license numbers pursuant to Open Records Decision No. 684 (2009).¹ You also state the university will redact social security numbers pursuant to section 552.147 of the Government Code.² Furthermore, you state the requestor has agreed to the redaction of student identification numbers and other identification numbers. You claim portions of Exhibits B-1 and B-2 are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹This office issued Open Records Decision No. 684, 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, without the necessity of requesting an attorney general decision.

²We 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. Gov't Code § 552.147(b).

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 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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify the victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). You inform us Exhibits B-1 and B-2 concern alleged sexual assaults. You also inform us Exhibit B-1 uses a pseudonym to identify the alleged sexual assault victim. Ordinarily, the use of a pseudonym to identify a sexual assault victim sufficiently protects the victim’s privacy. In this instance, however, Exhibit B-1 also lists the victims initials, first name, and telephone number. Upon review, we find this information, which we marked, and the information we marked in Exhibit B-2 identifies or tends to identify sexual assault victims. Accordingly, the university must withhold the information we marked in Exhibits B-1 and B-2 under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information you marked in Exhibits B-1 and B-2 under common-law privacy does not identify or tend to identify the sexual assault victims. Thus, this information is not confidential under common-law privacy, and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”). CHRI is defined as “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.” Gov’t Code § 411.082(2). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. 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. *See* Gov’t Code § 411.089(b)(1). Upon review, we find the Federal Bureau of Investigation (“FBI”) number in Exhibit B-2 constitutes CHRI generated by the FBI. The university must withhold this number, which we marked, under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Finally, Exhibit B-2 contains a driver's license expiration year. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. 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(a)(1)). Therefore, the university must withhold the expiration year we have marked in Exhibit B-2 under section 552.130 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the university must withhold the information we marked in Exhibits B-1 and B-2 under common-law privacy, and the FBI number we marked in Exhibit B-2 under chapter 411 of the Government Code and federal law. The university must withhold the driver's license expiration date we marked in Exhibit B-2 under section 552.130 of the Government Code. The remaining 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, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 427003

Enc. Submitted documents

c: Requestor
(w/o enclosures)