



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-12526

Dear Mr. Bounds:

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# 428339.

The Corpus Christi Police Department (the "department") received a request for all records during a specified time period pertaining to four named individuals. You state the department will provide some of the requested information to the requestor with certain information redacted under section 552.147 of the Government Code and under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ You claim portions of the submitted incident reports and person history records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication

¹Section 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). The previous determination issued in Open Records Decision No. 684 authorizes all governmental bodies 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.

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. A 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 courthouse 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that pertains to some of the named individuals, but does not list the named individuals as suspects, arrestees, or criminal defendants. Thus, we will consider your remaining arguments under section 552.101 for the submitted information.

You claim the information you have marked pertaining to incident report numbers 98-070009 and 99-027549 is protected by common-law privacy. 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find you have failed to demonstrate how the information you seek to withhold is highly intimate or embarrassing. Consequently, the department may not withhold the information you have marked pertaining to report numbers 98-070009 and 99-027549 under section 552.101 of the Government Code in conjunction with common-law privacy. As you have not claimed any other exceptions to disclosure for that information, the department must release it.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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.* 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. 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. You claim the information you have marked constitutes CHRI. Upon review, we agree the information you have marked consists of CHRI that is confidential under chapter 411. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked in the submitted information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department must release the remaining 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 428339

Enc. Submitted documents

c: Requestor
(w/o enclosures)