



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-12956

Dear Ms. Villarreal:

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# 429363 (Waco Ref. No. LGL-11-867).

The Waco Police Department (the "department") received a request for information related to two specified incidents. You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 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). This office has found 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). Furthermore, we find

a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You argue the submitted information is confidential pursuant to the holding in *Reporters Committee*. However, the present request seeks information related to two specified incidents. The requestor does not seek a compilation of information for any individual. Thus, we find the present request is not a request for an unspecified compilation of any individual's criminal history, and therefore the department may not withhold the submitted information under section 552.101 in conjunction with common-law privacy on this basis.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted reports pertain to alleged assaults involving adults. You have not demonstrated the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. We therefore conclude the submitted information is not confidential under section 261.201 of the Family Code, and the department may not withhold the information on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

We note a portion of the submitted information is subject to section 411.083 of the Government Code, which is also encompassed by section 552.101 of the Government Code. Section 411.083 of the Government Code pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of 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.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, 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. Upon review, we find some of the submitted information consists of confidential CHRI. Accordingly, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

You also raise section 552.130 of the Government Code, which excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] 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(a)). Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code.¹ However, the remaining information you have marked does not constitute motor vehicle record information for purposes of section 552.130. Consequently, the department may not withhold the remaining information you have marked under section 552.130.

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must also withhold the information we have marked under section 552.130 of the Government Code and 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,

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/em

Ref: ID# 429363

Enc. Submitted documents

c: Requestor
(w/o enclosures)