



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2011

Ms. Lillian G. Graham  
Assistant City Attorney  
Office of the City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185

OR2011-13131

Dear Ms. Graham:

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# 429477.

The Mesquite Police Department (the "department") received requests from two requestors for the offense report pertaining to service number LPD110618064163, involving the first requestor's brother-in-law. The second requestor additionally seeks the related arrest report. You claim the portions of the submitted information you marked 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.

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 common-law right of 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this case, the submitted information reveals that the first requestor knows the identity of the individual involved, as well as the nature of the incident to which this information pertains. Therefore, withholding only the involved individual's identity or certain details of the incident from this requestor would not preserve the individual's common-law right to privacy. Accordingly, the offense report must be withheld in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> However, we have no indication the second requestor knows the nature of the incident. Accordingly, the submitted information may not be withheld in its entirety under common-law privacy from the second requestor. However, upon review, we agree the portions of the submitted offense and arrest reports that we have marked are highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold this marked information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by statute, including section 411.083 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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information in accordance with 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information to the first requestor.

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. 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 agree the department must withhold from the second requestor the remaining information you marked under section 552.101 in conjunction with chapter 411 and federal law.

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).* We agree the department must withhold from the second requestor most of the motor vehicle record information you have marked under section 552.130 of the Government Code. You have not explained how the state identification number is motor vehicle record information subject to section 552.130. Accordingly this number, which we have marked for release, may not be withheld from the second requestor.

In summary, with respect to the first requestor, the department must withhold the submitted offense report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With respect to the second requestor, the department must (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information you marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (3) except for the information we marked for release, withhold the information you marked under section 552.130 of the Government Code; and (4) release the remaining information.<sup>2</sup>

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](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>2</sup>You marked social security numbers in the remaining information, which you state the department will withhold under section 552.147(b) of the Government Code. *See Gov't Code § 552.147(b)* (authorizing governmental bodies to redact living person's social security number without requesting decision from this office). We agree the department may withhold the social security numbers you marked from the second requestor under section 552.147(b).

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 black ink, appearing to read "Bob Davis", with a stylized flourish at the end.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 429477

Enc. Submitted documents

c: Requestor  
(w/o enclosures)