



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2011

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2011-13281

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# 430570.

The Mesquite Police Department (the "department") received a request for two specified arrest reports. You claim that portions of the submitted information 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 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 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* ORD 565. 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 that a portion of the submitted information consists of confidential CHRI. Accordingly, the department must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code and federal law. However, we find the remaining information you seek to withhold under chapter 411 does not consist of CHRI for purposes of that chapter. Therefore, this information is not confidential under chapter 411, and the department may not withhold any information under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Therefore, the department must generally withhold the criminal history information we have marked under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of the individual whose privacy interests are at issue in the submitted information. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect this individual's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the authorized representative of the individual and has a special right of access to the information we have marked, then this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. However, if the requestor does not have a special right of access, then the department must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or 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). We note, however, section 552.130 protects privacy interests. As previously noted, the requestor may be an authorized representative of one of the individuals

whose motor vehicle record information is at issue. Thus, the requestor may have a right of access under section 552.023 of the Government Code to this individual's motor vehicle record information. Gov't Code § 552.023(b). If the requestor is an authorized representative of the individual at issue, then she has a right of access under section 552.023 to the individual's motor vehicle record information, and it may not be withheld from her under section 552.130. If the requestor is not an authorized representative of this individual, then this information, except as marked for release, must be withheld under section 552.130. The department must withhold the remaining motor vehicle record information you have marked that does not pertain to the individual at issue under section 552.130.<sup>1</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. If the requestor is the authorized representative of the individual at issue, the department must release the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and you have marked under section 552.130 of the Government Code. However, if the requestor does not have a special right of access, then the department must withhold the individual's information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and you have marked under section 552.130 of the Government Code, except where marked for release. In either instance, the department must withhold the remaining Texas motor vehicle record information you have marked under section 552.130 of the Government Code. As you raise no further exceptions to disclosure, the department must release the remaining information to the requestor.<sup>2</sup>

---

<sup>1</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. We further note you have marked a social security number in the remaining information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Because section 552.147 protects personal privacy interests and because, as previously noted, the requestor may be the authorized representative of the individual whose social security number is at issue, the requestor may have a right of access under section 552.023 to the individual's social security number. *Id.* § 552.023(b). If the requestor is an authorized representative of the individual at issue, then she has a right of access under section 552.023 of the Government Code to the individual's social security number, and it may not be withheld from him under section 552.147. If the requestor is not an authorized representative of the individual at issue, we note the department may withhold it under section 552.147(b).

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, 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 "Sarah Casterline", with a stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 430570

Enc. Submitted documents

c: Requestor  
(w/o enclosures)