



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-14571

Dear Ms. Lentz:

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# 432466.

The Williamson County Sheriff's Office (the "sheriff") received a request for information about two named individuals during certain time periods and for two specified arrests. You indicate the sheriff will withhold the social security numbers you have marked pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from this office under the Act). You claim some of the requested information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 section encompasses the doctrine of common-law privacy, which

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks, in part, access to unspecified law enforcement records relating to two named individuals. Thus, his request requires the sheriff to compile the named individuals' criminal histories and thereby implicates their privacy interests. Accordingly, to the extent the sheriff maintains any unspecified information that depicts either of the two named individuals as a suspect, arrested person, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor has also asked for information related to two specified arrests. This portion of the request does not require the sheriff to compile unspecified law enforcement records and, thus, does not implicate the privacy interests of the named individuals. Therefore, records related to the two specified arrests may not be withheld under section 552.101 on the basis of common-law privacy. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "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* ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas 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. *See*

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. 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. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find some of the submitted information, which we have marked, constitutes CHRI and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, none of the remaining information consists of CHRI and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit 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). Therefore, the sheriff must withhold the information we have marked under section 552.130 of the Government Code.

You claim some of the remaining information is subject to section 552.136 of the Government Code, which provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). We agree the sheriff must withhold the credit card number you have marked in the remaining records under section 552.136 of the Government Code.

²We 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 without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

In summary, to the extent the sheriff maintains unspecified law enforcement records depicting either of the two named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (2) section 552.101 in conjunction with section 560.003 of the Government Code; (3) section 552.130 of the Government Code; and (4) section 552.136 of the Government Code. The remaining information must be released to the requestor.³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 432466

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining arguments.