



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2011

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

OR2011-16717

Dear Ms. Villareal:

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# 436150 (LGL 11-1231).

The Waco Police Department (the “department”) received a request for information pertaining to a named individual for a specified time period. You indicate you have released some information to the requestor. You claim that the submitted information is 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 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). 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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to

the public. Upon review, we find the present request, in part, requires the department to compile unspecified law enforcement records concerning the individual named in the request and implicates that individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. You have submitted information that does not involve the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual. Thus, we will address your arguments against disclosure of this information.

We note that the submitted documents include ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 also encompasses information that other statutes make confidential. Section 550.065(b) states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with any of the specified items of information. Accordingly, the department must withhold the ST-3 accident reports we have marked under section 552.101 of the Government Code in conjunction with to section 550.065(b) of the Transportation Code.<sup>1</sup>

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of the submitted ST-3 reports.

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The report we have marked involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). It does not appear that any of the exceptions in section 58.007 apply. Therefore, we find the report we have marked is confidential under section 58.007(c) of the Family Code, and must be withheld under section 552.101 of the Government Code.

Section 552.101 also 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, 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 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 conclude the department must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 and federal law.

As previously discussed, section 552.101 encompasses the common-law right of privacy, which protects information that is highly intimate or embarrassing and is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d 685. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987)

(prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code 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, title, or registration issued by an agency of this state, or an agency of 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(a)(1), (2)). Upon review, we agree portions of the remaining information consist of motor vehicle record information. Accordingly, except where we have marked for release, the department must withhold the motor vehicle record information you have highlighted in the remaining information, as well as the motor vehicle record information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, "Notwithstanding 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."<sup>2</sup> Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Upon review, we find the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses consent to their disclosure.<sup>3</sup>

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold under section 552.101 of the Government Code (1) the ST-3 accident reports we have marked under in conjunction with section 550.065(b) of the Transportation Code, (2) the report we

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

have marked in conjunction with section 58.007(c) of the Family Code, (3) the information we have marked in conjunction with section 411.083 of the Government Code and federal law, and (4) the information we have marked in conjunction with common-law privacy. Except where we have marked for release, the department must withhold the motor vehicle record information you have highlighted in the remaining information, as well as the motor vehicle record information we have marked, under section 552.130 of the Government Code. The department must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses consent to their disclosure. The remaining information must be released.<sup>4</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, 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 436150

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>4</sup>Section 552.147(b) of the Government Code authorizes a government 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).