



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-17207

Dear Mr. Bounds:

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# 437671.

The Corpus Christi Police Department (the "department") received a request for all records relating to two named individuals, including information pertaining to a specific incident. You state you will provide the requestor with some information. You also state you have redacted information subject to section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ In addition, you state social security numbers have been

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 numbers under section 552.130, without the necessity of requesting an attorney general decision. We note, however, that effective September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

redacted pursuant to section 552.147 of the Government Code.² You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments stating why information should or should not be released).

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 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. *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 satisfied. *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) (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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In part, the present request seeks all records pertaining to the named individuals. Thus, this part of the request requires the department to compile the named individuals' criminal histories. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, other than records pertaining to the specific incident listed by the requestor, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, in his comments the requestor specifies he seeks information pertaining to a specific incident. We find this portion of the request does not implicate any individual's right to privacy. Furthermore, you have submitted information in which the named individuals are not listed as suspects, arrestees, or criminal defendants. Accordingly, we will address your remaining arguments under section 552.101 of the Government Code.

Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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). Because case numbers 1006150133 and 1006160001 pertain to an investigation of alleged or suspected child abuse or neglect, such information is within the scope of section 261.201 of the Family Code.³ *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information related to case numbers 1006150133 and 1006160001 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

You assert the submitted information contains CRB-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 of the Government Code encompasses information protected by other statutes, such as section 550.065(b) of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). You inform us that the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CRB-3 accident report forms you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You also assert the submitted information contains criminal history record information (“CHRI”) generated by the Federal Bureau of Investigation (“FBI”). Section 552.101 of the

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Government Code also encompasses laws that make CHRI confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Upon review, we find the FBI numbers you have marked constitute CHRI generated by the FBI, which the department must withhold pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary: (1) to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, other than records pertaining to the specific incident listed by the requestor, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the information related to case numbers 1006150133 and 1006160001 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) the department must withhold the submitted CRB-3 accident report forms you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; and (4) the department must withhold the FBI numbers you have marked pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The remaining information must be released.

Finally, you ask this office to issue a previous determination permitting the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code when such requests are not made by individuals or entities who are authorized to obtain such numbers under chapter 411 of the Government Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the department must withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the need of requesting a ruling from this office when requests for such numbers are not made by individuals or entities who are authorized to obtain them under chapter 411 of the Government Code. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,

A handwritten signature in cursive script that reads "Damien Shores".

Damien Shores
Assistant Attorney General
Open Records Division

DS/sdk

Ref: ID# 437671

Enc. Submitted documents

c: Requestor
(w/o enclosures)