



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2011

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

OR2011-17272

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# 438089.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified police report and arrest record. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 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. This exception encompasses laws that make criminal history record information ("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.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except 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. Similarly, 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 a portion of the information, which we have marked, constitutes CHRI generated by the FBI, which the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.¹ However, none of the remaining information constitutes CHRI for the purposes of chapter 411. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). The type 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. This office has found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *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). We note the requestor has a special right of access, however, under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect her privacy.² *See Gov't Code* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, we find the information we have marked pertaining to individuals other than the requestor is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the

¹We note an individual can obtain his own CHRI from DPS. *See Gov't Code* § 411.083(b)(3).

²Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Gov't Code* § 552.023(a).

department must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or county. *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 driver's license number and license plate number you have marked are subject to section 552.130. However, the license plate number you marked pertains to the requestor's car. Because section 552.130 protects privacy interests, the requestor has a right of access under section 552.023 of the Government Code to this information. *See* Gov't Code § 552.023(a). The driver's license number, which we have marked, must be withheld under section 552.130 of the Government Code.

You have also marked a social security number in the submitted information under section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. The department may withhold the social security number you have marked under section 552.147.³

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, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.130. The department may withhold the information you have marked under section 552.147 of the Government Code. The remaining information must be released.⁴

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

³ We note that section 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 a decision from this office under the Act.

⁴ Because the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released, if the department should receive another request for this information from someone without such a right of access, the department should again request an opinion from this office.

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 black ink, appearing to read "Damien Shores", written over a horizontal line.

Damien Shores
Assistant Attorney General
Open Records Division

DS/sdk

Ref: ID# 438089

Enc. Submitted documents

c: Requestor
(w/o enclosures)