



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2012

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2012-00655

Dear Mr. Scott:

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# 442256 (City ID# 469).

The Wichita Falls Police Department (the "department") received a request for all criminal records pertaining to a named individual. You claim the submitted 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), 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). 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 CR-3 accident report form we have marked under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which

would be highly objectionable to a reasonable person and (2) 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. This office has found 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) (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. However, we note because the common law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Upon review, we agree the present request for unspecified law enforcement records pertaining to the named individual generally implicates the named individual's right to privacy. However, the submitted information reveals that the named individual is deceased. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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 ("NCIC") or by the Texas Crime Information Center ("TCIC"). 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* Open Records Decision No. 565 (1990). 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 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 because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as

permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Upon review, we find the information 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.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]”¹ Gov’t Code § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. As previously noted, the right of privacy lapses at death. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491. Upon review, we find the department must generally withhold the information we have marked under section 552.130 of the Government Code. However, we note that some of the motor vehicle record information at issue relates to a vehicle that may have been owned by an individual who is now deceased. Accordingly, the information that pertains to the deceased individual’s vehicle, which we have marked, may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the information relating to this vehicle is not excepted from disclosure and must be released. Regardless, the department must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states 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). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). This office has determined an insurance policy number is an access device for purposes of section 552.136. However, as with section 552.130, section 552.136 protects the privacy interests of individuals, and the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, to the extent the debit card number, credit card number, and insurance policy number we have marked pertain to accounts in which a living individual has an interest, the department must withhold them under section 552.136. However, if this information pertains solely to a deceased individual, it may not be withheld under section 552.136.

¹The 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).

In summary, the department must withhold the CR-3 accident report form we have marked under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. The information that pertains to the deceased individual's vehicle, which we have marked, may only be withheld under section 552.130 of the Government Code if a living person owns an interest in the vehicle at issue. The department must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the debit card number, credit card number, and insurance policy number we have marked pertain to accounts in which a living individual has an interest, the department must withhold them under section 552.136 of the Government Code. The department must release the remaining information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 442256

Enc. Submitted documents

c: Requestor
(w/o enclosures)