



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2012-01254

Dear Mr. Ohnemiller:

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# 443282.

The Midland Police Department (the "department") received a request for four categories of information pertaining to a specified motor vehicle accident. You state the department has released some of the requested information. You claim that portions of the submitted information are 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. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. 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." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083

of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See id.* § 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. Thus, 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 subchapter F of chapter 411 of the Government Code. We note, however, 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 criminal justice system). Additionally, we note CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). You claim portions of the submitted information are protected by section 411.083. Upon review, we find the information we have marked constitutes CHRI for purposes of chapter 411 of the Government Code. The department must withhold this information under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 and federal law. However, we find no portion of the remaining information is CHRI for purposes of chapter 411. Thus, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the financial information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

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[.]” Gov’t Code § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the

right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). We also note the requestor in this instance is the insurance provider for a company that owns two of the vehicles listed in the submitted information. As such, the requestor has a right of access to his insured's motor vehicle record information. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Upon review, we find the driver's license information and motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code.

We note portions of the remaining information are subject to section 552.1175 of the Government Code.¹ Section 552.1175 provides in relevant part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). The submitted documents contain information pertaining to a peace officer not employed by the department. Upon review, we find the department

¹The 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).

must withhold the information we have marked under section 552.1175 if the individual to whom this information concerns elects to restrict access to his information in accordance with section 552.1175(b).

In summary, the department must withhold (1) the CHRI we marked under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 and federal law; (2) the financial information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the driver's license information and motor vehicle record information we marked under section 552.130 of the Government Code; and (4) the information we marked under section 552.1175 of the Government Code if the individual to whom this information concerns elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The remaining information must be released.²

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

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²We note the remaining information contains social security numbers. 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. Gov't Code § 552.147(b). However, section 552.147(b) does not apply to the social security number of a deceased individual. *See id.* Therefore, the department may not withhold the social security number of the deceased individual under section 552.147. However, the department may withhold the social security numbers of living individuals in the remaining information under section 552.147.

Ref: ID# 443282

Enc. Submitted documents

c: Requestor
(w/o enclosures)