



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2012

Ms. Sol M. Cortez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901-2516

OR2012-02084

Dear Ms. Cortez:

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# 444901.

The El Paso Police Department (the "department"), which you represent, received a request for information pertaining to two named individuals and their child. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information. Accordingly, with the exception of the information you have marked for release, the department may withhold the submitted information under section 552.108(a)(2).

We note the information you have marked for release contains information subject to sections 552.101 and 552.130 of the Government Code.<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either

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<sup>1</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).

constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information other statutes make confidential. Criminal history record information (“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. 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 Government Code chapter 411, subchapter F. Upon review, we find the department must withhold the CHRI we have marked in the information you have marked for release under section 552.101 in conjunction with chapter 411 and federal law.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are 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 a matter of legitimate public interest. Therefore, the department must withhold the information we have marked in the information you have marked for release under section 552.101 of the Government Code in conjunction with common-law privacy.

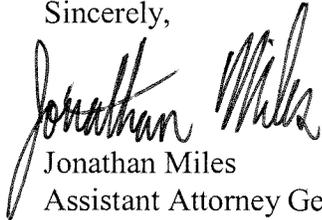
Portions of the remaining information you have marked for release are subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration, issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1), (2). The department must withhold the motor vehicle information we have marked in the information you have marked for release under section 552.130 of the Government Code.

In summary, with the exception of the information you have marked for release, the department may withhold the submitted information under section 552.108(a)(2). In releasing the remaining information, the department must withhold the CHRI we marked under section 552.101 in conjunction with chapter 411 and federal law, the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the motor vehicle information we have marked under section 552.130 of the Government Code.<sup>2</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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 444901

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor is a Family Court Counselor with the Family Court Services Division of the Tarrant County Domestic Relations Office, and indicates he is requesting the information in order to complete a court-ordered social study. A domestic relations office created under chapter 203 of the Family Code is entitled to obtain from the Department of Public Safety criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203. See Gov't Code § 411.1285(a); Fam. Code § 201.001(2) (defining "domestic relations office"). As the submitted information does not contain any criminal history record information that relates to any person who is the subject of the social study, we need not discuss the applicability of section 411.1285 to this request.