



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2012

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2012-03697

Dear Ms. Monteros:

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# 448797.

The El Paso District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You state you are releasing some of the requested information, but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.1325, 552.137, and 552.147 of the Government Code.¹ 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." This section encompasses information protected by other statutes, including 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

¹Although you have marked some of the submitted information under section 552.107 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you no longer assert this exception. *See* Gov't Code §§ 552.301, 552.302.

Decision No. 565 (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 that the Department of Public Safety (“DPS”) maintains, except that the 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, but 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.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Upon review, we find a portion of the responsive information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the district attorney’s office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, you have failed to demonstrate how the remaining information at issue consists of CHRI for purposes of chapter 411, and the district attorney’s office may not withhold it under section 552.101 of the Government Code on that basis.

The submitted information contains fingerprints. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the district attorney’s office must withhold the fingerprints you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

The submitted information also contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). 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. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more

pieces of information specified by the statute.² *Id.* The requestor has not provided the district attorney's office with two of the three pieces of information. Thus, the district attorney's office must withhold the accident report you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b).

Section 552.101 of the Government Code 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). Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). The submitted documents contain personal financial information, and the public does not have a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600. We have marked the information that the district attorney's office must withhold under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not confidential under common-law privacy, and the district attorney's office may not withhold it under section 552.101 on that ground.

You assert some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(3) provides the following:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

²Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b)(3). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, 552.301(e)(1)(A); *see also* Open Records Decision No. 434 at 2-3 (1986). You state the information you have marked under section 552.108(b)(3) consists of the mental impressions of the district attorney's office with regard to the prosecution at issue. Based on your representations and our review, we find the submitted information at issue reflects the mental processes or legal reasoning of the district attorney's office. Therefore, the district attorney's office may withhold the information you have marked under section 552.108(b)(3) of the Government Code.³

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information 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;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130. The remaining information you seek to withhold under section 552.130 does not consist of motor vehicle record information, and the district attorney's office may not withhold it on that ground.

You assert some of the remaining information is excepted from disclosure under section 552.1325 of the Government Code, which provides in relevant part the following:

(a) In this section:

³As our ruling is dispositive, we do not address your other arguments to withhold this information, including your assertion of section 552.137 of the Government Code.

(1) “Crime victim” means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) “Victim impact statement” means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. You state some of the submitted information is “related to a victim impact statement[.]”⁴ However, you do not inform us the information at issue is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement. *See id.* § 552.1325(b); *see also id.* § 552.301(e)(1)(A). Therefore, we conclude the district attorney’s office has failed to establish any of the remaining information is excepted from disclosure pursuant to section 552.1325.

You assert some of the remaining information is excepted under section 552.147 of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). The district attorney’s office may withhold the social security numbers you have marked under section 552.147.⁵

We conclude the following: the district attorney’s office (1) must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and section 550.065(b) of the Transportation Code; (2) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and common-law privacy and under section 552.130 of the Government Code; (3) may withhold the information you

⁴Based on your arguments and representations, we understand the information you seek to withhold under section 552.1325 consists of the information you have labeled “victims fund.” We note you marked this information under section 552.101, and not section 552.1325.

⁵We note 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.

have marked under sections 552.108(b)(3) and 552.147 of the Government Code; and (5) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 448797

Enc. Submitted documents

c: Requestor
(w/o enclosures)