



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2012

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

OR2012-04114

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# 448227.

The Mesquite Police Department (the "department") received two requests from two different requestors for two separate police reports.¹ The first requestor seeks arrest report number 1135959, while the second requestor seeks arrest report number 0014028. 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. Section 552.101 encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* 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 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.*

¹We note both requests were received by the department on December 23, 2011.

§ 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 in conjunction with chapter 411, subchapter F of the Government Code. We note 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 the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information you have marked in report number 1135959 and the Federal Bureau of Investigation ("FBI") numbers you have marked in report number 0014028 constitute CHRI. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.² However, the remaining information you have marked does not consist of CHRI that is subject to section 411.083 of the Government Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

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 concluded 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. 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). Upon review, we find the information you have marked in report number 0014028 is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

another state or country or a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document is excepted from public release. Gov't Code § 552.130(a)(1), (3). Upon review, we agree the department must withhold the driver's license numbers you have marked in report number 0014028 under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked in report number 1135959 from the first requestor and the FBI numbers you have marked in report number 0014028 from the second requestor under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department must withhold the information you have marked in report number 0014028 from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license numbers you have marked in report number 0014028 from the second requestor under section 552.130 of the Government Code. The remaining information in report number 1135959 must be released to the first requestor.³ The remaining information in report number 0014028 must be released to the second requestor.

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 Opperman
Assistant Attorney General
Open Records Division

SO/dls

³Because the first requestor has a right of access to some of the information being released, which is confidential with respect to the general public, the department must again seek a ruling from this office if it receives another request for this information from a different requestor.

Ref: ID# 448227

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)