



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2012

Mr. Bill Delmore
Assistant District Attorney
Montgomery County
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2012-05663

Dear Mr. Delmore:

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# 451222.

The District Attorney’s Office of the 9th Judicial District (the “district attorney’s office”) received a request for all information pertaining to a specified case. You claim that the requested 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.

Initially, we note, and you acknowledge, that the district attorney’s office did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(b). The submitted information, therefore, is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason to withhold information generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You assert section 552.101 of the Government Code, which can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold 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. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) 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 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12; *see generally* Gov’t Code ch. 411 subch. F. 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; 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 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. 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.

Upon review, we agree the information in Appendix B constitutes CHRI that the district attorney’s office must withhold from disclosure under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has determined common-law privacy encompasses certain types of personal financial information. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and

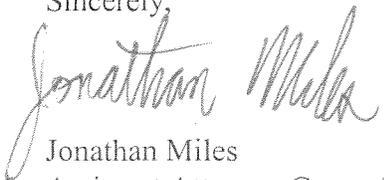
public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review, we find no portion of the information in Appendix C is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district attorney's office may not withhold any of the information in Appendix C on the basis of section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district attorney's office must withhold Appendix B under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 451222

Enc. Submitted documents

c: Requestor
(w/o enclosures)