



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2012

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2012-05792

Dear Mr. Hager:

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# 451626 (File Reference # 54026).

The Red Oak Police Department (the "department"), which you represent, received a request for information pertaining to two specified offenses. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.1175 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 the doctrine of common-law privacy, which 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. *See 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. *See id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request, in part, requires the department to compile the criminal history of a certain individual. However, we note the requestor is an attorney representing the individual at issue. As this individual's authorized representative, the requestor has a right of access to information concerning his client that would otherwise be withheld to protect his client's privacy. *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 individuals request information concerning themselves). Therefore, the department may not withhold any of the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy also protects the type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, which includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See Indus. Found.*, 540 S.W.2d at 683. You assert portions of the submitted information pertaining to the requestor's client are protected by common-law privacy. However, as noted above, the requestor has a right of access to information concerning his client that would otherwise be withheld to protect his client's privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the department may not withhold any portion of the information you have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses 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. *See* 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. *See 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. *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 Government Code chapter 411, subchapter F. You claim that some of the submitted information is protected by chapter 411. Upon review, we conclude the information we have marked constitutes CHRI for purposes of chapter 411. Accordingly, this information must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

We note the remaining information contains a CR-3 accident report. Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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). In this instance, the requestor has not provided the department with two of the three requisite pieces of information specified by section 550.065(c)(4). Accordingly, the department must withhold the CR-3 accident report we have marked from the requestor under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

Section 552.130 provides that information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, the department must withhold the driver's license and motor vehicle record information we have marked under section 552.130 of the Government Code.¹

Section 552.1175 of the Government Code provides in 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

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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.

Id. § 552.1175(a)(1), (b). You raise section 552.1175 for portions of the remaining information. Upon review, however, we find that none of the remaining information consists of a home address, home telephone number, emergency contact information, social security number, or family member information for the purposes of section 552.1175 of the Government Code, and none of the remaining information may be withheld on this basis.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must withhold the CR-3 accident report we marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. The department must withhold the information we marked under section 552.130 of the Government Code. The department must release the remaining information.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

²We note the information being released contains confidential information, to which the requestor has a right of access under section 552.023 of the Government Code as his client's authorized representative, and fingerprints, to which the requestor has a right of access under section 560.002 of the Government Code. *See* Gov't Code §§ 552.023(a), 560.002; ORD 481 at 4. Further, we note Open Records Decision No. 684 also authorizes all governmental bodies to withhold a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request for information from an individual other than the individual whose fingerprints are at issue or his authorized representative, the department is authorized to withhold his fingerprints under section 552.101 in conjunction with section 560.003.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 451626

Enc. Submitted documents

c: Requestor
(w/o enclosures)