



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2012

Mr. Jason M. Rammel
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2012-06002

Dear Mr. Rammel:

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# 452437.

The Hutto Police Department (the "department"), which you represent, received a request for information related to a specified incident involving the requestor and another named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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. This exception encompasses information other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center is confidential under section 552.101 in conjunction with federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the

general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). We have marked CHRI in Exhibit B the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.¹

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) it 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 elements of the test must be established. *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. 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). We also find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

As you appear to acknowledge, the requestor would have a right of access to any information the department would be required to withhold from the public to protect her privacy. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).² You contend,

¹As we are able to make this determination, we need not address your other arguments against disclosure of the marked information.

²Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy

however, that other information in Exhibit B must be withheld to protect the privacy of the other individual named in the present request for information. Having considered your arguments, we note the requestor specifically seeks access to information related to a specific incident involving herself and the other named individual. Therefore, her request does not require the department to compile the other named individual's criminal history and thus does not implicate his privacy interests. Moreover, the remaining information in Exhibit B consists of motor vehicle and driving records. We note information relating to routine traffic violations does not implicate privacy concerns. *Cf.* Gov't Code § 411.081(b). We therefore conclude the remaining information in Exhibit B may not be withheld as a compilation of criminal history information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note common-law privacy under section 552.101 of the Government Code also encompasses certain types of personal financial information. This office has concluded 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). We have marked personal financial information in Exhibit B that is highly intimate or embarrassing and not a matter of legitimate public interest. Thus, the marked information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note some of the remaining information in Exhibit B falls within the scope of sections 552.130 and 552.136 of the Government Code.³ Section 552.130 excepts from disclosure information related 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. *See* Gov't Code § 552.130(a)(1)-(2). We have marked driver's license and motor vehicle information in Exhibit B that falls within the scope of section 552.130 of the Government Code.

interests." Gov't Code § 552.023(a).

³This office will raise sections 552.130 and 552.136 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the insurance policy number we have marked in Exhibit B falls within the scope of section 552.136 of the Government Code.

We next note that, like common-law privacy under section 552.101 of the Government Code, sections 552.130 and 552.136 of the Government Code protect personal privacy. In this instance, the requestor may be an authorized representative of the individual to whom the marked personal financial information, driver’s license and motor vehicle information, and insurance policy number pertain. As such, the requestor would have a right of access to the individual’s private information under section 552.023 of the Government Code. *See id.* § 552.023; ORD 481 at 4. Therefore, if the requestor is the authorized representative of the individual concerned, then his personal financial information, driver’s license and motor vehicle information, and insurance policy number may not be withheld from this requestor under sections 552.101, 552.130, and 552.136 of the Government Code and must be released. If the requestor is not the individual’s authorized representative, then the department must withhold the marked personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy, the marked driver’s license and motor vehicle information under section 552.130 of the Government Code, and the marked insurance policy number under section 552.136 of the Government Code.

Lastly, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Exhibit C is related to an investigation that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to Exhibit C.⁴

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th

⁴As we are able to make this determination, we need not address your other arguments for Exhibit C.

Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining information in Exhibit C under section 552.108(a)(2) of the Government Code.

In summary, the department (1) must withhold the marked CHRI under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (2) must withhold the marked personal financial information under section 552.101 in conjunction with common-law privacy, the marked driver's license and motor vehicle information under section 552.130 of the Government Code, and the marked insurance policy number under section 552.136 of the Government Code, unless the requestor has a right of access to the information under section 552.023 of the Government Code; and (3) may withhold Exhibit C under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c), which must be released.⁵ The department must release the rest of the submitted information.⁶

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.

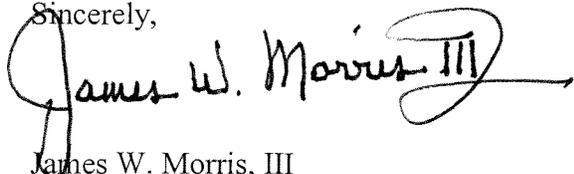
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

⁵We note basic information includes an arrested person's social security number. 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. The requestor has a right, however, to the arrested person's social security number if she is his authorized representative. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

⁶We note the remaining information includes the requestor's driver's license information, which the department would be required to withhold from the public under section 552.130 of the Government Code. Section 552.130(c) now authorizes a governmental body to redact the driver's license and personal identification information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision from this office. See Gov't Code § 552.130(c); see also *id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Thus, should the department receive another request for these same records from a different requestor, section 552.130(c) authorizes the department to withhold the present requestor's driver's license information without requesting another decision.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 452437

Enc: Submitted documents

c: Requestor
(w/o enclosures)