



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 21, 2012

Mr. John C. West  
General Counsel  
TDCJ - Office of the Inspector General  
4616 Howard Lane, Suite 250  
Austin, TX 78728

OR2012-07609

Dear Mr. West:

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# 455339 (OIG ORR# 2012-00063).

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for all information in the possession of the department relating to a named individual, including "records pertaining to mental health, intellectual functioning, alcohol and drug rehabilitation, and social services[.]" You state the department will release some of the requested information, including the basic information pertaining to the submitted file. You also state you will redact certain addresses, telephone numbers, social security numbers, and personal family information pursuant to sections 552.117 and 552.147(b) of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108,

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<sup>1</sup>We note Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code. Further, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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.* § 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 we have marked constitutes 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. However, the remaining information 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.

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<sup>2</sup>Although you raise section 552.134 of the Government Code, you have provided no arguments explaining how any portion of that section is applicable in this instance. Therefore, we assume you no longer assert section 552.134 of the Government Code. *See* Gov’t Code §§ 552.301, .302.

Section 552.101 of the Government Code also 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 her client that would otherwise be withheld to protect her 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 remaining responsive information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim some of the remaining responsive information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Gov't Code § 552.102(a)*. The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find no portion of the remaining responsive information is subject to section 552.102(a) of the Government Code, and the department may not withhold any of the remaining responsive information on that basis.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Gov't Code § 552.108(a)(1)*. A governmental body claiming

section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining responsive information contains photographs of offenders that are not department photographs listed in section 552.029 of the Government Code. *See Gov't Code* § 552.029 (providing that certain categories of information about inmate confined in facility operated by or under contact with department are subject to require disclosure). You further state the photographs at issue are part of the investigative effort in the listed files and these cases “are all either still open or are unresolved criminal cases.” Thus, we understand you to represent the photographs at issue pertain to cases that are ongoing. Based upon your representation and our review, we conclude release of the photographs we have marked will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the photographs we have marked under section 552.108(a)(1) of the Government Code.

With regard to your arguments under section 552.117 of the Government Code, we note the remaining responsive information constitutes law enforcement records that are held by the department in its investigative capacity as a law enforcement entity, and not as the employer of the department employee involved. Therefore, section 552.117 is not applicable to this information. However, this information may be excepted from disclosure under section 552.1175 of the Government Code.<sup>3</sup> Section 552.1175 provides in part:

(a) This section applies only to:

...

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to 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:

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

- (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)(3), (b). The remaining responsive information contains the personal information of an employee or former employee of the department. Therefore, to the extent that the individual whose information we have marked elects to restrict access to her information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code. If the individual does not elect to restrict access to the information we have marked, then the department may not withhold this information under section 552.1175.<sup>4</sup>

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license, title, or registration issued an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(2). In this instance, the requestor is the authorized representative of the named individual in the request. We note section 552.130 protects privacy interests. Therefore, the requestor has a right of access under section 552.023 of the Government Code to her client's motor vehicle record information, and the department may not withhold that information under section 552.130 of the Government Code. *See generally id.* § 552.023; ORD 481 at 4.

We note some of the responsive information appears to be subject to copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department may withhold the photographs we have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code, to the extent that the individual whose information we have marked elects to restrict access to her

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<sup>4</sup>Regardless of the applicability of section 552.1175, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

information in accordance with section 552.1175(b) of the Government Code. The department must release the remaining responsive information to this requestor but may only release copyrighted information in accordance with copyright law.<sup>5</sup>

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](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/bhf

Ref: ID# 455339

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note the requestor has a right of access to some information being released pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023; ORD 481at 4. Thus, if the department receives another request for this information from a different requestor, the department must seek another ruling from this office.