



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2012

Chief James S. Kelley  
City of Sweetwater Police Department  
P.O. Box 450  
Sweetwater, Texas 79556

OR2012-08379

Dear Chief Kelley:

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# 455168.

The Sweetwater Police Department (the "department") received a request for a specified report and all police records related to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.132, and 552.1325 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. This exception encompasses the doctrine of common-law privacy, which protects information that (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 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history

information). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, records relating to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). In this instance, the requestor seeks, in part, access to unspecified law enforcement records involving a named individual. Thus, this part of the request requires the department to compile the named individual's criminal history and thereby implicates the privacy interest of the named individual. Therefore, to the extent the department maintains any records that depict the named individual as a suspect, arrested person, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history.

We note the requestor also seeks access to information relating to a specific incident. That portion of the request does not require the department to compile unspecified law enforcement records and does not implicate the individual's right to privacy. Thus, the information related to that incident may not be withheld under section 552.101 of the Government Code on privacy grounds as a compilation of criminal history information. You also have submitted reports that do not depict the named individual as a suspect, arrested person, or criminal defendant, and that pertain to traffic violations. Thus, those reports also may not be withheld under section 552.101 on privacy grounds as a compilation of criminal history information.

Section 552.108(a)(1) of the Government Code 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 the release of the requested information would interfere with law enforcement. *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 "information provided at hand is a pending criminal investigation." Upon review, however, we note that the information at issue pertains to many separate unrelated incidents. You do not provide any arguments explaining which of the submitted incidents is pending with the department. Thus, you have failed to explain how release of the information at issue, which pertains to various incidents, would interfere with the department's investigation of any particular case. We find you have not sufficiently demonstrated any of the information at issue falls within the scope of subsection 552.108(a)(1). We therefore conclude the department may not withhold any of the information at issue under section 552.108(a)(1).

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. 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. *Id.* at 10–12. 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we find the FBI numbers we have marked constitute confidential CHRI. The department must generally withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

You have submitted CR-3 crash report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 552.101 of the Government Code encompasses section 550.065(b) of the Transportation Code, which states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this case, the requestor has not provided the department with two of the three pieces of information. Thus, the department must withhold the CR-3 crash report forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note a portion of the remaining information consists of a report of abuse under section 261.201(a)(1). *See id.* § 261.001(1)(A), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You do not inform us the department has adopted rules that govern the release of this type of information. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (construing statutory predecessor to section 261.201).

As noted above, common-law privacy is encompassed by section 552.101 of the Government Code and protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W. 2d at 685. 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 id.* at 683. We find the information we have marked in the remaining information is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Next, you assert some of the remaining information is excepted from disclosure under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim’s compensation division of the attorney general’s office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Gov't Code § 552.132(b), (d). The remaining information is held by the department, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of the department who elected in accordance with section 552.132(d). Accordingly, we conclude the department may not withhold any portion of the remaining information under section 552.132 of the Government Code.

Section 552.1325 of the Government Code provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

*Id.* § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). Upon review, we find the remaining information does not include a victim impact statement for purposes of section 552.1325, nor have you explained that any of the information at issue was submitted to the department for the purposes of preparing a victim impact statement. Therefore, the department may not withhold any of the remaining information under section 552.1325 of the Government Code.

We note the requestor in this case is a Special Agent for the Treasury Inspector General for Tax Administration and might have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any [CHRI] maintained by the [Department of Public Safety] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing the Texas Department of Public Safety shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] [CHRI] maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). We note CHRI is defined as “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.” *See id.* § 411.082(2). Thus, the requested information in this instance may contain CHRI. However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” he is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

In this instance, we cannot determine whether the requestor is a representative of a criminal justice agency, or whether he intends to use the requested CHRI for a criminal justice purpose. Consequently, if the department determines this requestor is a representative of a criminal justice agency and intends to use the CHRI for a criminal justice purpose, we conclude, the department must make available to the requestor the CHRI from such documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, including from information listing the named individual as a suspect, arrested person, or criminal defendant, to the extent it exists. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, to the extent it exists, the department must withhold any information that depicts the named individual as a suspect, arrested person, or criminal defendant under section 552.101 in conjunction with common-law privacy. The department must withhold (1) the FBI numbers we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, (2) the marked CR-3 crash report forms under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, (3) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code, (4) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (5) the motor vehicle record information we have marked under section 552.130 of the Government Code. If the department determines this requestor is a representative of a criminal justice agency and intends to use the CHRI for a criminal justice purpose, we conclude, the department must make available to the requestor the CHRI from such documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, including from information listing the named individual as a suspect, arrested person, or criminal defendant, to the extent it exists. The remaining information must be released.<sup>1</sup>

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<sup>1</sup>We note the information being released contains social security numbers. 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. Gov't Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read "C Galindo Jr.", written in a cursive style.

Charles Galindo Jr.  
Assistant Attorney General  
Open Records Division

CG/bhf

Ref: ID# 455168

Enc. Submitted documents

c: Requestor  
(w/o enclosures)