



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2012

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2012-09310

Dear Ms. Sims:

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# 456388.

The City of Lubbock (the "city") received request for (1) all traffic infractions and citations issued during a specified time period, (2) all warrants issued during a specified time period, (3) booking photos and mugshots on every individual arrested by the city's police department during a specified time period and, additionally the jail/arrest log for the same time period. You contend a portion of the requested information is not subject to the Act. You additionally state a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered your arguments and reviewed the representative sample of information you submitted.²

¹Although you also raise section 552.108 of the Government Code as an exception to disclosure, you have provided no arguments regarding the applicability of this section. We therefore assume you have withdrawn your claim under this exception. See Gov't Code §§ 552.301(b), (e), .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

You state the information responsive to the first and second categories of the request is maintained by the city's municipal court (the "court"). Although the Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body," Gov't Code § 552.002(a)(1), the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Therefore, based on your representation that the information at issue is maintained by the court, we conclude the information responsive to the first and second categories of the request is not subject to the Act and need not be released in response to the instant request for information.³ We next address your arguments for the information responsive to the third category of the request.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses federal and state laws that make criminal history record information ("CHRI") confidential. 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). 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

³We note records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review of the information at issue, we determine no portion of this information constitutes CHRI that is confidential under federal law or chapter 411, and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also 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. *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. *Id.* at 681-82. A compilation of an individual's criminal history record information 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) (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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, the third category of the request does not seek a compilation of an individual's criminal history; rather, the request is for certain information on every individual arrested by the city's police department during a specified time period. Such a request does not implicate an individual's common-law right of privacy. Accordingly, the city may not withhold the information at issue in its entirety as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

You also seek to withhold dates of birth of arrestees under section 552.101 of the Government Code in conjunction with common-law privacy. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683. We note, however, the dates of birth of members of the public are not excepted from required public disclosure under common-law privacy. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we determine the city has failed to demonstrate that the information at issue is intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold the arrestees' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.130 as an exception to disclosure. Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See Gov't Code § 552.130*. The submitted information does not contain any information subject to section 552.130.

Accordingly, no portion of the remaining information may be withheld under section 552.130 of the Government Code.

In summary, the information maintained by the court is not subject to the Act and need not be released in response to the instant request for information. 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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 456388

Enc. Submitted documents

c: Requestor
(w/o enclosures)