



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2012

Mr. Reg Hargrove
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
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OR2012-10194

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 457745 (PIR No. 12-33272).

The Office of the Attorney General (the "OAG") received a request for information pertaining to claims concerning crimes committed at Flashdancer in Arlington, Texas. The OAG does not object to release of the information but because the law enforcement interests of the Arlington Police Department (the "department") and Tarrant County District Attorney's Office (the "D.A.'s Office") are implicated, the OAG notified these entities of the request. The department explains it forwarded redacted copies of offense reports to the OAG as part of a nuisance lawsuit the OAG filed on behalf of the City of Arlington. The department and D.A.'s Office assert section 552.108 of the Government Code to withhold some of the requested information.¹ See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the exception the department and D.A.'s Office assert and have reviewed the information at issue.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release

¹Some of the offense reports enumerated in the department's indices, including some that the department seeks to withhold, are not submitted by the OAG. Thus, this decision does not address such information.

of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency is in the custody of information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

The department and D.A.'s Office ask the OAG to withhold specified reports from disclosure so as not to interfere with ongoing criminal investigations and prosecutions. Based on these representations, we agree release of the information 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, the OAG may withhold the specified reports pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The department and D.A.'s Office ask the OAG to withhold specified reports from disclosure that concluded in results other than conviction or deferred adjudication. Based on these representations, we conclude the OAG may withhold the specified reports pursuant section 552.108(a)(2).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 satisfied. *Id.* at 681-82. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Also, 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have marked the information in report number 11-37040 on page CITY 00707 and in report number 11-49721 on pages CITY 00839 and 00840 the OAG must withhold under common-law privacy.

Section 552.101 also encompasses information made confidential by statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, 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. Upon review, we find the Federal Bureau of Investigation ("FBI") numbers generated by the FBI constitute CHRI. Thus, the OAG must withhold the FBI numbers in the remaining reports under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 411.192 of the Government Code governs the release of information maintained by DPS concerning the licensure of individuals to carry concealed handguns, and provides:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained

under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a), (b). We have marked the information in report number 11-41953 on page CITY 00747 regarding a concealed handgun license that the department obtained from DPS. The requestor is not a criminal justice agency or the license holder whose information is at issue. Further, we note section 411.193 is not applicable in this instance. *See id.* § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by DPS during the preceding month available to the public). Therefore, the OAG must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a driver's license and motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1), (2). The OAG must withhold the license plate and driver's license numbers, license plate years, license plate types, and driver's license expiration date under section 552.130.

We note the submitted information includes information subject to section 552.136 of the Government Code, which states "[n]otwithstanding any other provision of this chapter, 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). "Access device" is an account number, personal identification number, electronic serial number, mobile identification number, or other instrument identifier or means of account access that alone or in conjunction with another access device may be used to 1) obtain money, goods, services, or another thing of value or 2) initiate a transfer of funds other than a transfer originated solely by paper instrument. *Id.* § 552.136(a). Accordingly, the OAG must withhold the insurance policy number in report number 11-49721 on page CITY 00840 under section 552.136.

In summary, the OAG may withhold the offense reports specified by the department and D.A.'s Office under subsections 552.108(a)(1) and (a)(2).² The OAG must withhold 1) the FBI numbers under section 411.083 of the Government Code, 2) the concealed handgun license information under section 411.192 of the Government Code, 3) the private information under section 552.101 in conjunction with common-law privacy, 4) the motor

²The department submitted indices indicating which offense reports are subject to subsections 552.108(a)(1) and (a)(2). We are providing the OAG with these indices for its convenience.

vehicle record information under section 552.130, and 5) the insurance policy number under section 552.136. The OAG must release the remainder.³

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 457745

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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³We note report number 09-36873 contains a 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 Public Information Act. Gov't Code § 552.147(b).