



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2012

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2012-15190

Dear Ms. Lentz:

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# 466115.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for a specified case file. We note you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, and 552.136 of the Government Code. Further, you state the submitted information may implicate the interests of the Austin Police department (the "department"), the Texas Department of Public Safety ("DPS"), and the Florida Department of Law Enforcement ("DLE"). Accordingly you have notified the department, DPS, and DLE of their right to submit arguments to this office as to why the submitted information should not be released.<sup>2</sup> See Gov't Code § 552.304 (interested party may submit comments stating why information

---

<sup>1</sup>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. See Gov't Code § 552.147(b).

<sup>2</sup>This office has received comments from DPS stating that it does not object to the release of any of the submitted information. Furthermore, this office has not received comments from the department or DLE explaining why any of the submitted information should not be released.

should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Accordingly, the sheriff’s office must withhold the I-9 you have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. *See* 8 U.S.C. § 1324a(b)(1)(B)-(D); 8 C.F.R. § 274a.2(b)(1)(v)(A)-(C).

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

---

<sup>3</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. The submitted information contains information acquired from a polygraph examination. You state the requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the sheriff's office must withhold the polygraph information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential 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 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that DPS maintains, except that 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 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 a portion of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>4</sup> However, we find you have not

---

<sup>4</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure of this information.

demonstrated how any portion of the remaining information you seek to withhold consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the fingerprints or palm prints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff's office must withhold the fingerprints and palm prints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. 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. This office has found 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) Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See Open Records Decision Nos. 600* (1992) (finding personal financial information to include choice of particular insurance carrier), 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 (1989) (individual's mortgage payments, assets, bills, and credit history). This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987) (prescription drugs, illnesses, operations, and handicaps). This office has also found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394* (1983); *cf. Fam. Code* § 261.201. Upon review, we find the information you have marked, along with the

additional information we have marked, is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff's office must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7. The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held that those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure;" and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates, and our office found that "the public's right to obtain an inmate's correspondence list is not sufficient to overcome the first amendment right of the inmate's correspondents to maintain communication with him free of the threat of public exposure." ORD 185. Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORDs 428 and 430. Further, we recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. See also ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; see ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Accordingly, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the constitutional right to privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. See Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find none of the remaining information constitutes the home address, home telephone number, emergency contact information, or social security number of a peace officer held by the sheriff's office in an employment context. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

You also raise section 552.1175 of the Government Code for a portion of the remaining information. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, 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:

(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)(1), (b). A portion of the remaining information relates to the Lee County Sheriff, an individual who was a licensed peace officer of another law enforcement agency at the time the information at issue was created. To the extent the information at issue, which you have marked, relates to a peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. However, if the individual whose information is at issue is not a currently licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note section 552.130 does not protect the state of issuance of a driver's license or license plate, which we have marked for release. We also note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, section 552.130 is not applicable to the deceased individual's driver's license information, which we have marked for release, and the sheriff's office may not withhold it on that basis. Accordingly, with the exception of the information we have marked for release, the sheriff's office must generally withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. However, we note some of the marked motor vehicle record information relates to a vehicle owned by an individual who is now deceased. If a living individual owns an interest in the vehicle, the sheriff's office must withhold this information under section 552.130. If no living individual owns an interest in the vehicle, then the marked information relating to that vehicle is not excepted from disclosure and must be released.

Section 552.136 of the Government Code states that “[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.” Gov't Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a) (defining access device). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. We note check numbers are not access device numbers for purposes of section 552.136. Thus, the sheriff's office may not withhold the check numbers you have marked, which we have marked for release, under section 552.136. Further, although you have marked additional information, including a tax identification number, under section 552.136, you have not submitted any arguments explaining how the information at issue can be used to obtain money, goods, services, or another thing of value. Accordingly, the sheriff's office may not withhold this information, which we have marked for release, under section 552.136. Upon review, with the exception of the information we have marked for release, we find the sheriff's office must generally withhold the credit card numbers, account numbers, and routing numbers you have marked, as well as the additional information we have marked, under section 552.136 of the

Government Code. However, section 552.136 protects the privacy interests of individuals, and, as previously noted, the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Accordingly, to the extent the marked account numbers pertain solely to a deceased individual, they may not be withheld under section 552.136. To the extent the marked account numbers pertain to accounts in which a living individual has an interest, the sheriff's office must withhold them under section 552.136.

In summary, the sheriff's office must withhold the I-9 form you have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The sheriff's office must withhold the polygraph information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must withhold the fingerprints and palm prints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy. The sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with constitutional privacy. To the extent the information at issue, which you have marked, relates to a peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. However, the information pertaining to the vehicle owned by the deceased individual may only be withheld if a living individual owns an interest in the vehicle. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked, as well as the information we have marked, under section 552.136 of the Government Code. However, the account numbers belonging to the deceased individual may only be withheld if a living individual has an interest in the accounts. The sheriff's office must release the remaining information.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 466115

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Colleen Waters  
Central Records  
Austin Police Department  
P.O. Box 689001  
Austin, Texas 78768  
(w/o enclosures)

Ms. Margaret Wells  
Florida Department of Law Enforcement  
P.O. Box 1489  
Tallahassee, Florida 32302  
(w/o enclosures)

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773  
(w/o enclosures)