



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2012-16183

Dear Ms. Brooks:

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# 467781.

The Midland Police Department (the "department") received a request for report number 111110002. You state some information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ 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 information that is made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI;

¹Although you do not raise sections 552.130 and 552.147 of the Government Code in your brief, we understand you to raise these sections based on your markings in the submitted information.

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. 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 chapter 411, subchapter F. We note driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find the department 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. However, none of the remaining information at issue constitutes CHRI for the purposes of chapter 411. Therefore, the department may not withhold any of this information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license or a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130. We note, however, the license plate issuing state does not constitute motor vehicle record information for purposes of section 552.130. Thus, except for the issuing state of a license plate, which we have marked for release, the department must withhold the information you have highlighted and the information we have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² *Id.* § 552.147(a).

²Section 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).

Accordingly, we agree the department may withhold the social security number you have highlighted under section 552.147 of the Government Code.

In summary, the department 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 department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked for release, the department must withhold the highlighted and marked information under section 552.130 of the Government Code. The department may withhold the social security number you have highlighted under section 552.147 of the Government Code. 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 467781

Enc. Submitted documents

c: Requestor
(w/o enclosures)