



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2012

Ms. Laura Russell
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2012-17174

Dear Ms. Russell:

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# 469030.

The Texas Parks and Wildlife Department (the "department") received a request for information regarding two named department officers, including (1) all information related to any grievances or complaints filed against them, (2) all information related to any investigations into their actions or activities, and (3) their employee files. You state you have released some of the requested information to the requestor. You indicate the department will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹Section 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).

²Although you do not specifically raise sections 552.130 and 552.137, you have marked information for which you appear to claim these exceptions. Accordingly, we will address sections 552.130 and 552.137, as these are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). We note, the information at issue consists of an internal investigation of the named officers pertaining to a citizen complaint against the officers. Records of an internal investigation do not constitute juvenile law enforcement records for purposes of section 58.007(c). However, portions of the submitted information, submitted as a part of the internal affairs investigation, consist of law enforcement records concerning a fifteen-year-old arrested for interference with police duties. Thus, we find this information, which we have marked, involves juvenile conduct indicating a need for supervision. *See id.* § 51.03(a) (defining “delinquent conduct”). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, none of the remaining information consists of juvenile law enforcement records for purposes of section 58.007(c), and therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

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. 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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. See 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); see generally Gov’t Code ch. 411 subch. F. 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). Thus, 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. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Upon review, we find the information we have marked constitutes confidential CHRI, which the department must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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. The type of information considered highly intimate or 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. In addition, this office has found common-law privacy applies to the identifying information of juvenile offenders. See Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in the submitted information and indicated in the submitted recordings pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 of the Government Code or section 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). Accordingly, the department must withhold the information we have indicated in the submitted recordings under section 552.117(a)(2) of the Government Code.⁴ We note section 552.117(a)(2) also encompasses a peace officer's cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. See Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The submitted documents contain the cellular telephone numbers of peace officers. Therefore, the department must withhold the information we have marked in the submitted documents and marked in the submitted recordings under section 552.117(a)(2) of the Government Code; however, the department must withhold the marked cellular telephone numbers only if a governmental body did not pay for the service.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. See Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See ORD 506 at 5-6. Accordingly, the department must withhold the information the cellular telephone number we have marked in the submitted documents under section 552.1175, if the individual to whom the information pertains is still a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b). However, the department may withhold the marked cellular telephone number only if the cellular service is not paid for with government funds. If the individual to whom this information pertains is no longer a licensed peace officer or no election is made, the department may not withhold the cellular telephone number we have marked under section 552.1175 of the Government Code.

You have marked some of the remaining information under sections 552.130 and 552.137 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information you have marked, in addition to the information we have marked in the submitted documents and indicated in the submitted recordings, under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The department must withhold the e-mail addresses you have marked, in addition to the e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.⁵

In summary, the department must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction federal law and chapter 411 of the Government Code; (3) the information we have marked in the submitted documents and indicated in the submitted recordings under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the cellular telephone numbers we have marked in the submitted documents and the information we have indicated in the submitted recordings under section 552.117(a)(2) of the Government Code, if the cellular service is not paid for with government funds; (5) the cellular telephone number we have marked under section 552.1175 of the Government Code if the individual to whom the information pertain is still a licensed peace officer and elects to restrict access to their information in accordance with section 552.1175(b), and the cellular service is not paid for with government funds; (6) the motor vehicle information you have marked, in addition to the information we have marked in the submitted documents and indicated in the submitted recordings, under section 552.130 of the Government Code; and (7) the e-mail addresses you have marked, in addition to the e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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.

⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

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 cursive script, appearing to read "Kathryn R. Mattingly". The signature is written in black ink and is positioned above the typed name and title.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 469030

Enc. Submitted documents

c: Requestor
(w/o enclosures)