



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2012

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

OR2012-18747

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# 471698.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information regarding a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.114, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor has excluded social security numbers and Texas driver's license, license plate, and vehicle identification numbers from the scope of her request. Thus, those types of information are not responsive to the request. This request does not address the public availability of any such information, and the sheriff's office need not release any such information in response to this request. Accordingly, we do not address your arguments against disclosure of this information.

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<sup>1</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.

Next, we address your claim that some of the submitted records are education records that must be withheld under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g). These provisions apply only to student records in the custody of educational institutions and to records directly transferred from an educational institution to a third party. *See* 34 C.F.R. §§ 99.33(a)(2), 99.3 (defining “student”). The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> Although the sheriff’s office is not an educational institution, we note the submitted information reflects the sheriff’s office directly obtained the records at issue from an educational institution during the course of its investigation. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. Such determinations under FERPA must be made by the educational authority from which the records were obtained. Thus, the sheriff’s office must contact the educational institution from which the records at issue were obtained, as well as the DOE, regarding the applicability of FERPA to these records. Likewise, we do not address your arguments under section 552.114 of the Government Code. *See* Gov’t Code § 552.114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA).

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 chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 that states obtain from the federal government or other states. *See* Open Record Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that 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* 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. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the

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<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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 Government Code chapter 411, subchapter F. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find the information we have marked constitutes CHRI and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, we find none of the remaining information constitutes CHRI for purposes of chapter 411, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of 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 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 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. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the sheriff's office must withhold the information you have marked, and the additional information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Therefore, the sheriff's office must withhold the information we have marked under section 552.130(a)(2).

In summary, the sheriff's office must contact the educational institution from which it obtained the submitted student records, as well as the DOE, regarding the applicability of FERPA to those documents. The sheriff's office must withhold (1) the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code

and federal law, (2) the information you have marked, and the additional information we have marked, under section 552.101 in conjunction with common-law privacy, and (3) the information we have marked under section 552.130 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](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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 471698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)