



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2013

Mr. Richard R. Gore
Assistant Criminal District Attorney
Randall County
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

OR2013-00804

Dear Mr. Gore:

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# 476233.

The Randall County Criminal District Attorney's Office (the "district attorney's office") received a request for all information pertaining to the requestor held by the district attorney's office. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you seek to withhold is also contained on a compact disc that you state was released to the requestor. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information

¹We note the district attorney's office sought and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). See also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

is confidential. Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decisions Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.007. Accordingly, the district attorney's office may not withhold the previously released information, which we have marked, under section 552.108 of the Government Code. However, we note some of this information is subject to sections 552.130 and 552.136 of the Government Code, which make information confidential.² Accordingly, we will consider the applicability of these exceptions to the information you have released and the remaining information you seek to withhold. We also consider your arguments under section 552.108 for the information that has not been released.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution [or]

²The 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).

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)–(2), (b)(1)–(2). Section 552.108(a)(1) protects law enforcement records pertaining to a pending criminal investigation or prosecution. *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). Sections 552.108(a)(2) and 552.108(b)(2) except from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. *See Gov't Code § 552.108(a)(2), (b)(2)*. Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information fits within the claimed exception. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a concluded case in which the defendant pled guilty and release of the information could interfere with law enforcement activities. Based on this representation, we conclude you have failed to demonstrate the submitted information pertains to a pending criminal prosecution. Accordingly, the district attorney's office may not withhold the submitted information under section 552.108(a)(1) of the Government Code. We also conclude you have failed to demonstrate the submitted information pertains to an investigation that ended in a final result other than conviction or deferred adjudication. Accordingly, the district attorney's office may not withhold the submitted information under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code. Finally, we conclude you have failed to demonstrate how the release of the submitted information would otherwise interfere with law enforcement or prosecution for the purposes of section 552.108(b)(1). Accordingly, the district attorney's office may not withhold the submitted information under section 552.108(b)(1) of the Government Code.

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 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. 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 at 7 (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 the 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. See *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. We note section 411.083 does not apply to active warrant information or other information relating to an individual'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. *Id.* § 411.082(2)(B).³ Upon review, we find the information we have marked constitutes confidential CHRI. The district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The remaining information does not constitute confidential CHRI and it may not be withheld 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 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. 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 courthouses 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 note records relating to routine traffic violations are not considered criminal history information. See Gov't Code § 411.082(2)(B) (CHRI does not include driving record information). Upon review, we find the criminal compilation information we have marked is of no legitimate public interest. The district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration

³We note an individual can obtain his own CHRI from DPS. See Gov't Code § 411.083(b)(3).

issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)–(2). Accordingly, the district attorney's office must withhold the information we have marked under section 552.130 of the Government Code.⁴

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining “access device”). Accordingly, the district attorney's office must withhold the account numbers we have marked under section 552.136 of the Government Code.⁵

In summary, the district attorney's office must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we have marked under section 552.130 and section 552.136 of the Government Code. The remaining information must be released.⁶

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.

⁴Section 552.130 of the Government Code permits a governmental body to redact certain motor vehicle record information without requesting a decision from this office, but the governmental body must provide notice to the requestor. *See* Gov't Code § 552.130(c)–(e). Additionally, Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies permitting them to withhold certain categories of information, including a Texas license plate number under section 552.130 of the Government Code, without requesting a decision from this office.

⁵Section 552.136 of the Government Code permits a governmental body to redact an access device number without requesting a decision from this office, but the governmental body must provide notice to the requestor. *See* Gov't Code § 552.136(c)–(e).

⁶We note the requestor has a right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the district attorney's office receives another request for this same information from a different requestor, the district attorney's office must again seek a ruling from this office.

We also note the remaining information contains social security numbers. Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without requesting a decision from this office. *See* Gov't Code § 552.147(b). However, the requestor has a right of access to his own social security number. *See id.* § 552.023.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 476233

Enc. Submitted documents

c: Requestor
(w/o enclosures)