



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2013

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

OR2013-01459

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# 477152.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to either of two named individuals or a specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The submitted signed Magistrate's Order for Emergency Protection and signed Order to Notify Victim are subject to section 552.022(a)(17). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for these documents, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, the sheriff's office may not withhold these documents under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions for these documents, they must be released. We will address your

claim under section 552.101 in conjunction with common-law privacy and the remaining exceptions you claim for the remaining information that is not subject to section 552.022(a)(17).

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 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 courthouse 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). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

You contend the present request requires the sheriff’s office to compile unspecified law enforcement records concerning either of the individuals named in the request, thus implicating the named individuals’ rights to privacy. However, in this instance we note the requestor represents one of named individuals. As such, the requestor has a special right of access under section 552.023 of the Government Code to the information pertaining to her client that would otherwise be withheld to protect her client’s privacy. *See* Gov’t Code § 552.023(a)-(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). The remaining information consists of domestic violence reports involving the requestor’s client and the other named individual. Upon review, we find the requestor is seeking specific domestic violence reports involving her client and the other named individual. This portion of the request does not implicate the other named individual’s common-law right to privacy. Thus, the information responsive to this portion of the request is not part of a criminal history compilation and it may not be withheld under section 552.101 on this basis.

However, upon review, we find portions of the submitted information are subject to common-law privacy. The type of information considered 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. 540 S.W.2d at 683. This office has found 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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 §§ 411.081-.1409. 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 id.* § 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we conclude the sheriff's office must withhold the CHRI you have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.001 provides in part that "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." *Id.* § 560.001(1). We note some of the information you seek to withhold consists of the requestor's client's fingerprints. Access to fingerprint information is governed by

sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.002 provides that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information. Accordingly, the sheriff’s office must release the requestor’s client’s fingerprints to this requestor under section 560.002 of the Government Code. However, the remaining information at issue consists of fingerprints of an individual who is not the requestor or her client. As such, the sheriff’s office must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130. We note some of the information you have marked includes the requestor’s client’s information. Section 552.130 is based on privacy principles; thus, the requestor has a right of access to her client’s information as her authorized representative, and the sheriff’s office may not withhold it from her on this basis. *See id.* § 552.023; ORD 481 at 4. Upon review, we conclude the sheriff’s office must withhold the information we have marked that pertains to an individual who is not the requestor’s client under section 552.130.

Section 552.136 of the Government Code states, “Notwithstanding 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). Upon review, we note some of the information you have marked belongs to the requestor’s client. As such, the requestor has a right of access to her client’s information as her authorized representative pursuant to section 552.023 of the Government Code. *See id.* § 552.023; ORD 481 at 4. We conclude the sheriff’s office must withhold the partial credit card numbers we have marked that pertain to an individual who is not the requestor’s client under section 552.136.

In summary, the sheriff’s office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the CHRI you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (3) the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (4) the information we have marked under section 552.130 of the Government Code; and (5) the information we have marked under

section 552.136 of the Government Code. The sheriff's office must release the remaining information.¹

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 477152

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the remaining information contains social security numbers. 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 under the Act. Gov't Code § 552.147(b). The requestor has a right, however, to her client's social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We also note the information being released in this instance includes information that is confidential with respect to the general public. *See id.* §§ 552.023(a), 560.002(1)(A); ORD 481 at 4. Therefore, if the sheriff's office receives another request for this information from an individual other than this requestor or her client, the sheriff's office must again seek a ruling from this office.