



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2013

Mr. G. Brian Garrison
Assistant District Attorney
Dallas County Criminal District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2013-02197

Dear Mr. Garrison:

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# 478237.

The Dallas County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case file, excluding attorney work product, computer-aided dispatch reports, and Texas motor vehicle record information.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, as previously noted, the requestor has excluded Texas motor vehicle information from his request for information. Thus, the Texas motor vehicle record information contained in the submitted information is not responsive to the instant request. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

¹You inform us the district attorney's office received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Next, the requestor indicates the district attorney's office failed to comply with section 552.301 of the Government Code by failing to seek a ruling from this office within ten business days of receiving his original written request for information. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision Nos. 319 (1982), 177 (1977). Regardless of whether the district attorney's office failed to comply with section 552.301, because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will address the district attorney's office's arguments under section 552.101.

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 section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or 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." *See id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC 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. *See* Open Records Decision No. 565 at 7 (1990); *see also 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 subchapter F of chapter 411 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. *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. Thus, any CHRI obtained from

DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with subchapter F of chapter 411 of the Government Code. You claim some of the responsive information is subject to subchapter F of chapter 411 of the Government Code. Upon review, we find the information we have marked constitutes CHRI for purposes of chapter 411. Accordingly, the district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.² However, we find no portion of the remaining responsive information consists of CHRI for purposes of chapter 411. Thus, none of this information may be withheld under section 552.101 in conjunction with chapter 411 and federal law.

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 demonstrated. *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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You seek to withhold some of the remaining responsive information under section 552.101 as a criminal history compilation. Upon review, we find portions of the information at issue, which we have marked, must be withheld as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining responsive information consists of a compilation of an individual's criminal history. Accordingly, none of this information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) chapter 411 of the Government Code and federal law, and (2) common-law privacy. As no further exceptions to disclosure are raised for the remaining responsive information, the district attorney's office must release it.

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.

²As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/akg

Ref: ID# 478237

Enc. Submitted documents

c: Requestor
(w/o enclosures)