



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2013

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2013-04585

Dear Ms. Rangel:

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# 481926.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information related to two specified incidents and any other burglary and felony reports or documents related to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We 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.

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. *Cf. Gov't Code § 411.082 (2)(B)* (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See Gov't Code § 411.081(b)* (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We agree this request, in part, requires the sheriff's office to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates his right to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted information related to the two specified incidents. Thus, this information is not part of the named individual's criminal history compilation and may not be withheld under section 552.101 on this basis. Accordingly, we will address your arguments against disclosure of this information.

Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*, which 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. *Indus. Found.*, 540 S.W.2d at 683. This office has also 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)* (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, 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 marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement

records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides, in pertinent part, as follows:

(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.

Id. § 58.007(c). Upon review, we find report numbers 10-13320 and 10-13423 involve juvenile delinquent conduct occurring after September 1, 1997, and are, therefore, subject to section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). None of the exceptions in section 58.007 appear to apply; therefore, report numbers 10-13320 and 10-13423 are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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). 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 agree the sheriff's office must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, we find no portion of the remaining information consists of confidential CHRI for purposes of chapter 411 and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The remaining information contains fingerprints. There is no indication the requestor has a right of access to the fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the sheriff's office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.³

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. *See id.* § 552.130(a)(1). We find the sheriff's office must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold report numbers 10-13320 and 10-13423 under section 552.101 of the Government Code in conjunction with

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprint information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

section 58.007 of the Family Code. The sheriff's office must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The sheriff's office must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁴

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 481296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released 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).