



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2013

Ms. Charlotte Kim
Assistant Criminal District Attorney
Waller County
645 12th Street
Hempstead, Texas 77445

OR2013-08230

Dear Ms. Kim:

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# 488040.

The Waller County Criminal District Attorney's Office (the "district attorney's office") received a request for fourteen categories of information relating to a specified traffic accident. You state the district attorney's office has released some of the requested information. You claim 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.

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 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). We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement in 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. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI. This information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information (1) containing 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 satisfied. *Id.* at 681-82. 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. *Id.* at 683. 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. This office also 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).* Upon review, we conclude the information we have marked is highly intimate or embarrassing and of no legitimate public interest.

In this instance, however, the requestor may be the authorized representative of some of the individuals whose information we have marked. Section 552.023(a) states "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).* Thus, he may have a right of access to portions of the information we have marked. Accordingly, if the

requestor is acting as the authorized representative of any of the individuals whose information we have marked, then the district attorney's office may not withhold that individual's marked information from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of any individual whose information we have marked, then the district attorney's office must withhold the information we have marked pertaining to that individual under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit or motor vehicle title or registration or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. As noted above, the requestor may be the authorized representative of some of the individuals whose motor vehicle record information we have marked. Thus, he may have a right of access to these individuals' motor vehicle record information. *See id.* § 552.023; ORD 481. Accordingly, if the requestor is acting as the authorized representative of any of the individuals whose information we marked, then he has a right of access to the motor vehicle record information pertaining to that individual pursuant to section 552.023, and this information may not be withheld from him under section 552.130. If the requestor is not acting as the authorized representative of any individual, then the district attorney's office must withhold the motor vehicle record information we have marked pertaining to that individual under section 552.130 of the Government Code.

Section 552.136 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). We note section 552.136 also protects privacy interests. As noted above, the requestor may be the authorized representative of one of the individuals whose insurance policy number we have marked. Thus, he may have a right of access to that individual's marked insurance policy number. *See id.* § 552.023; ORD 481. Accordingly, if the requestor is acting as the authorized representative of that individual, then the district attorney's office may not withhold that individual's marked information from this requestor under section 552.136. If the requestor is not acting as the authorized representative of that individual, then the district attorney's office must withhold the information we have marked pertaining to that individual, as well as the remaining information we have marked, under section 552.136.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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 section 411.083 of the Government Code. Unless the requestor has a right of access pursuant to section 552.023 of the Government Code, the district attorney's office must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy; (2) section 552.130 of the Government Code; and (3) section 552.136 of the Government Code. The remaining information must be released.²

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,



David L. Wheelus

Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 488040

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains a social security number. 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. See Gov't Code § 552.147(b).