



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2013

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

OR2013-08383

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# 487901.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for cellular telephone records and e-mails for three named employees and "MDT records" sent and received by one of the named employees during two specified time periods. The sheriff's office received a second request for cellular telephone phone records and e-mails sent between two different named individuals for the same time periods. We understand you have 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 of the Government Code encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") 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." *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 §§ 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 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. We note, however, section 411.083 does not apply to active warrant information or other information relating to one'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 criminal justice system). Additionally, we note CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). Upon review, we find you have failed to demonstrate any of the submitted information constitutes CHRI for the purposes of chapter 411 or federal law. Thus, none of the submitted information may be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code, which protects the law enforcement records of juveniles. 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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007(c) of Family Code). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of section 58.007(c) of

Family Code). Upon review, we find the information we have marked in the submitted information consists of law enforcement records that involve juvenile delinquent conduct that occurred after September 1, 1997. As such, we find the information at issue is subject to section 58.007(c) of the Family Code. It does not appear any of the exceptions to confidentiality under section 58.007 apply to this information. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with section 58.007(c) of the Family Code.

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 met. *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. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990). Additionally, 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information may be subject to sections 552.117 and 552.130 of the Government Code.<sup>1</sup> Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

---

<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this instance, it is unclear whether the information we have marked pertains to currently licensed peace officers as defined by article 2.12. Accordingly, if the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, then the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, if the marked telephone numbers are cellular telephone numbers, the sheriff's office may withhold these numbers under section 552.117(a)(2) only if a governmental body does not pay for the cellular telephone services. If the individuals at issue are not licensed peace officers, then the sheriff's office may not withhold the personal information under section 552.117(a)(2). Further, if the marked telephone numbers are cellular telephone numbers and the telephone services are paid for by a governmental body, the marked telephone numbers may not be withheld under section 552.117(a)(2).

If the individuals at issue are not licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As noted above, section 552.117 applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individuals at issue are not currently licensed police officers and timely requested confidentiality under section 552.024, the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code. However, if the marked telephone numbers are cellular telephone numbers, the sheriff's office may withhold the numbers under section 552.117(a)(1) only if a governmental body does not pay for the cellular telephone services.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and common-law privacy. To the extent the information we have marked pertains to licensed peace officers, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information we have marked are not currently licensed police officers and timely requested confidentiality under section 552.024, the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code. However, if the telephone numbers we have marked are cellular telephone numbers, they may only be withheld under section 552.117 if the cellular telephone services are not paid for by a governmental body. The remaining information must be released.

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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 487901

Enc. Submitted documents

c: Requestor  
(w/o enclosures)