



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2013

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

OR2013-11836

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# 492870.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified offense report, offense reports involving a named individual from January 1, 2007 to the date of the request, and any pawn shop transactions involving the named individual from January 1, 2008 to the date of the request. You state you do not have information responsive to a portion of the request.<sup>1</sup> You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

*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. This office has found 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. United States 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The instant request, in part, is for unspecified law enforcement records involving the named individual. Thus, we agree the portion of the request seeking unspecified law enforcement records requires the sheriff's office to compile the named individual's criminal history and thereby implicates the named individual's privacy interests. However, you have only submitted information pertaining to the incident specified in the request. Because the requestor specifically requests this information, it is not part of a compilation of the individual's criminal history that implicates the person's privacy. Thus, the sheriff's office may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your remaining arguments against disclosure of the submitted information.

Section 552.101 also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC"). 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). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b).

Although you appear to contend the submitted information includes CHRI, you have not demonstrated that any of the information at issue was obtained from the NCIC or TCIC networks. We therefore conclude the sheriff's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with federal law or subchapter F of chapter 411 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state offense report number 13-5991 is part of a closed case that did not result in conviction or deferred adjudication. However, you have submitted documentation stating the case is closed "pending a workable lead." We find you have provided contradictory representations regarding whether offense report number 13-5991 relates to a case that has concluded in a final result other than conviction or deferred adjudication. Because of these contradictory representations, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Accordingly, the sheriff's office may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the sheriff's office must withhold the motor vehicle record information that 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 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

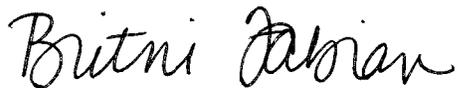
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>We note the information to be 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 492870

Enc. Submitted documents

c: Requestor  
(w/o enclosures)