



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2013

Mr. Jason L. Mathis
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202

OR2013-12244

Dear Mr. Mathis:

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# 498104.

The Town of Addison (the "town"), which you represent, received a request for police reports related to a named individual. You claim the requested 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 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 elements 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 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. The present request, in part, requires the department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. Therefore, to the extent the town maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. 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. We note some of the information at issue is subject to sections 552.101, 552.130, and 552.137 of the Government Code.¹ Accordingly, we will address the applicability of these sections to the information at issue.

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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that 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). 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. Upon review, we find a portion of the submitted information, which we have marked, consists of confidential CHRI for the purposes of chapter 411. Accordingly, the town 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.

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 personal identification document issued by an agency of this state or another state or country is

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

excepted from public release. *See id.* § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the town must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.²

We note the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the town must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the town maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, (2) section 552.130 of the Government Code, and (3) section 552.137 of the Government Code, unless the owners of the marked e-mail addresses affirmatively consent to their public disclosure. The remaining information must be released.³

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.

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov’t Code § 552.130(d), (e).

³We note the information being released includes the requestor’s e-mail address to which she has a right of access pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision. Accordingly, if the town receives another request from an individual other than this requestor, the town is authorized to withhold the requestor’s e-mail address under section 552.137 without the necessity of requesting an attorney general decision. We further note the information subject to release 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. *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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 498104

Enc. Submitted documents

c: Requestor
(w/o enclosures)