



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2014-10740

Dear Ms. Winn:

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# 526653.

The Travis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to eight specified incidents. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information related to case numbers 14-6249 and 14-6237 consists of completed investigations subject to section 552.022(a)(1). You seek to withhold a portion of the information at issue under section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *See id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the sheriff's office may not withhold any of the information subject to section 552.022 under section 552.107(2) of the Government Code. However, you raise section 552.108 as an exception to disclosure of the information subject to section 552.022. Accordingly, we will consider your claim under section 552.108 of the Government Code, pursuant to section 552.022(a)(1). Furthermore, because sections 552.101 and 552.130 of the Government Code make information confidential under the Act, we will consider the applicability of these sections to the information at issue. We will also consider your claims for the information not subject to section 552.022.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if... it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the information related to case numbers 14-6249 and 14-6237 pertains to closed investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) of the Government Code applies to case numbers 14-6249 and 14-6237.

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff's office may withhold the information

related to case numbers 14-6249 and 14-6237 under section 552.108(a)(2) of the Government Code.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. This section encompasses information protected by other statutes, including 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.” *Id.* § 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). 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 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). 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. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we conclude 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, upon review, we find that none of the remaining information at issue consists of CHRI for purposes of chapter 411 of the Government Code. Accordingly, none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information except to note that basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4.

emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You indicate the submitted information includes the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. We note you do not inform us whether Travis County is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the sheriff's office is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318, then, to the extent the submitted information contains the telephone numbers and addresses of 9-1-1 callers supplied by a 9-1-1 service supplier, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. If the sheriff's office is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone numbers and addresses were not supplied by a 9-1-1 service supplier, then the sheriff's office may not withhold this information under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides that "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" includes a person's name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). DPS is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). You state the information at issue was obtained by the sheriff's office from the DPS for use by the sheriff's office in carrying out its governmental functions. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.²

²As we make this determination, we do not address your remaining arguments against disclosure of this information.

You claim some of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (c). The DPPA defines "motor vehicle record," in relevant part, as "any record that pertains to a motor vehicle operator's permit . . . issued by a department of motor vehicles[.]" *Id.* § 2725(1). Section 2725 also defines personal information as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." *See id.* § 2725(3).

You state the submitted information contains personal information the sheriff's office obtained from DPS that is protected under the DPPA. However, upon review, we find the remaining information does not contain any personal information subject to section 2721. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of 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. *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 types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked 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 or the information is of legitimate public concern. Thus, none of the remaining information may be withheld 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 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. Gov't Code § 552.130(a). We note the requestor has a right of access to his client's own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). 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, with the exception of basic information, the sheriff's office may withhold the information related to case numbers 14-6249 and 14-6237 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code and sections 730.004 and 730.013 of the Transportation Code. If the sheriff's office is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318, then, to the extent the submitted information contains the telephone numbers and addresses of 9-1-1 callers supplied by

a 9-1-1 service supplier, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. The sheriff's office also must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy and (2) section 552.130 of the Government Code. 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.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 526653

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to some information being released pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4. Because such information may be confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.