



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2014

Ms. Lori Johnston  
Assistant District Attorney  
Wichita County  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2014-10746

Dear Ms. Johnston:

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# 526610 (ORR No. 00442).

The Wichita County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor's client, specifically all booking photos and certified records of all booking and release dates during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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). The submitted information contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI. Accordingly, we find the FBI number you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). We note the requestor has provided a written authorization from the individual whose information is at issue. Thus, the requestor has right of access to his client's fingerprints under section 560.002 of the Government Code. *See id.* § 560.002; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, we find the fingerprints at issue may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy 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. 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.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope

of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

As noted above, the requestor is the authorized representative of the individual whose privacy interests are at issue. Thus, he has a right of access to the information that would otherwise be withheld to protect his client’s privacy. *See* Gov’t Code § 552.023; ORD 481. Accordingly, this information may not be withheld from him under section 552.101 of the Government Code on the basis of common-law or constitutional privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We note section 552.130 protects privacy interests. As noted above, the requestor is the authorized representative of the individual whose motor vehicle record information is at issue. Thus, he has a right of access to his client’s motor vehicle record information. *See id.* § 552.023; ORD 481. Accordingly, this information may not be withheld from him under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147. We note section 552.147 protects privacy interests. As noted above, the requestor is the authorized representative of the individual whose information is at issue. Thus, he has a right of access to his client’s social security number. *See id.* § 552.023; ORD 481. Accordingly, this information may not be withheld from him under section 552.147 of the Government Code.

In summary, the sheriff’s office must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff’s office must release the remaining information to this requestor.<sup>1</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.

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

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<sup>1</sup>We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov’t Code §§ 552.023(a), 560.002.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Megan G. Holloway". The signature is written in black ink and is positioned above the typed name.

Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 526610

Enc. Submitted documents

c: Requestor  
(w/o enclosures)