



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1992

Ms. A. Lynn Nunns
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR92-242

Dear Ms. Nunns:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15538.

The City of Corpus Christi (the "city") has received a request for information relating to a certain taxicab driver and taxicab company. Specifically, the requestor seeks:

1. Any and all documents and/or information pertaining to the application(s) of Matrilla A. Wilson for taxicab driver's permit as well as any other materials, information, record renewal(s) in her file, etc.;
2. Any and all documents and/or information contained in the file of Yellow Checker Cab Company, Inc., regarding: franchise agreement or license to operate a taxi cab company in Corpus Christi, Nueces County, Texas, license(s) or permit(s) for business compliance with SAFETY-RESPONSIBILITY ACT, 6701(h), inspection reports, etc.

You have submitted to us for review two applications for a taxicab driver's permit, criminal history record information (CHRI) compiled by the city police department, including subject's authorization, copies of taxicab driver's licenses, Texas Department of Public Safety driver's records, a State of Texas Driving Safety Course

certificate of completion, and a personal auto insurance policy.¹ You claim that the documents submitted to us for review are excepted from required public disclosure by section 3(a)(1) of the Open Records Act. You have not submitted, nor do you comment on, information requested in item 2. We presume, therefore, that that information has been or will be made public. See Open Records Decision No. 363 (1983).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 5.08(b) of the Medical Practice Act, article 4495b, V.T.C.S., provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records may be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984); Open Records Decision No. 343 (1982). However, medical history information furnished by an employee to his employer is not within the ambit of article 4495b. Open Records Decision No. 316 (1982).

Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* The CHRI you have submitted appears to have been generated by the City of Corpus Christi Police Department. Thus, the federal regulations are inapplicable and we look to Texas law to determine whether the CHRI is disclosable.

In *Houston Chronicle Pub. Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court held that a person's arrest record and criminal history were excepted from public disclosure by section 3(a)(8). See also Open Records Decision Nos. 354 (1982); 252 (1980); 216; 183 (1978). CHRI has been excepted under section 3(a)(8) where, as here, the information is held by an administrative agency rather than a law enforcement agency. Open Records Decision No. 183. The city, however, has not claimed that this information is protected by section 3(a)(8) and

¹Also submitted to us for review is a letter informing a taxicab driver of the revocation of his taxicab driver's permit. You advise us that this document involves another taxicab driver and is not responsive to the request for information. Accordingly, we need not address its availability under the Open Records Act.

therefore has waived the right to claim this exception. Open Records Decision No. 473 (1987) (exceptions protecting governmental interests are waived when a governmental body fails to claim them). Other decisions of this office, however, have suggested that criminal history information may implicate privacy interests. See Open Records Decision No. 565 (1990); 216; see also *Houston Chronicle*, 531 S.W.2d at 188.

Information may also be withheld from required public disclosure under section 3(a)(1) if it meets the criteria articulated for common-law privacy by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Medical information may be withheld under common-law privacy, including information concerning a person's illnesses, operations, and physical handicaps, Open Records Decision No. 455 (1987), or drug and alcohol abuse. Open Records Decision No. 343 (1982). Common-law privacy may also protect personal financial information, including assets and income source information, "background" financial information, and information that reveals a person's personal financial or investment decisions. See, e.g., Open Records Decision Nos. 545 (1990); 523 (1989); 385; 373 (1983). However, whether such information meets the test for common-law privacy must be determined on a case-by-case basis. Open Records Decision Nos. 523 (1989) (financial information); 370 (1983) (medical information); see also Open Records Decision No. 215 (1978) (information about a licensee's addiction, mental illness, or criminal history).

The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4. The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Industrial Foundation*, 540 S.W.2d at 685.

We have examined the information submitted to us for review. The applications for a taxicab driver's permit include a medical examination (section 20) which is prepared and signed by a physician. These portions of the applications constitute "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with section 5.08(b) of the Medical Practices Act.

The CHRI and Department of Public Safety driver's records may be of an intimate or embarrassing nature. We conclude, however, that the public has a legitimate interest in their release because they reflect on the ability and suitability of a person licensed by the city to operate a taxicab. Accordingly, the CHRI and Department of Public Safety records may not be withheld under common-law privacy. Furthermore, this information is not the type of information protected by constitutional privacy. Accordingly, the CHRI and Department of Public Safety driver's records must be released.²

The applications for a taxicab driver's permit also elicit responses from the applicant regarding handicaps and drug and alcohol use (sections 10, 11, and 12). This information might be considered of an intimate and embarrassing nature; however, the public has a legitimate interest in its disclosure because it relates to the ability or suitability of an individual licensed by the city to transport members of the public. Accordingly, this information may not be withheld from required public disclosure under common-law privacy. We also conclude that the legitimate public interest in this information overcomes any expectation of privacy and is therefore not protected from required public disclosure by constitutional privacy. *See generally* Open Records Decision No. 215 (1978). The personal auto insurance policy reflects a person's personal investment decisions and is intimate. *See* Open Records Decision Nos. 545; 373 (1983). It is not apparent to us that this information is of legitimate public concern, and we conclude that it may be withheld from required public disclosure under section 3(a)(1).

The remainder of the information submitted to us for review -- including the portions of the applications for taxicab driver's permits not addressed above, copies of the taxicab driver's licenses, the subject's authorization for fingerprinting and compilation of CHRI, and the State of Texas Driving Safety Course certificate of completion -- contains no information which is intimate or embarrassing. Accordingly, this information may not be withheld under common-law privacy. Clearly, this information is also not protected by constitutional privacy. Moreover, we are unaware of any law which makes this information confidential. Accordingly, it must be released to the requestor.

²We note that section 21(e), art. 6687b, V.T.C.S., provides for the release of Department of Public Safety driver's records "to a person who submits the individual's driver's license number or his full name and date of birth and shows a legitimate need for the information."

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-242.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 15538

cc: Mr. Edward G. Aparicio
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