



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 20, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-0989

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39720.

The Travis County District Attorney's Office received an open records request for "a copy of all records or writings in your possession pertaining to all events related to any proceedings involving Thomas Sager or [Cause No. 95-0480]." You state that you have released all information which is clearly public but contend that some of the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We have considered the exception you raise and have reviewed the information at issue.

Exhibit A of the submitted information contains criminal history record information ("CHRI") which was received by the District Attorney's Office from either the Texas Department of Public Safety (the "DPS") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. 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 the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990). In addition, 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 find that most of the information contained in Exhibit A is CHRI and, therefore, must be withheld from public disclosure under section 552.101 of the Government Code. However, two documents in Exhibit A may not be withheld in their entirety. The first document, an Investigative Statement generated by the Travis County Attorney's Office, contains a reference to a previous arrest of a witness. The second document, a transcript of a statement made by a witness, contains a reference to a previous conviction. The reference to the previous arrest and the reference to the previous conviction contained in these two documents, which we have marked, must be withheld under section 552.101. The remainder of these documents must be released to the requestor.

Exhibit B of the submitted information contains the transcripts of audiotaped statements regarding a traffic accident made by Thomas Sager and others and taken by an investigator with the County Attorney's Office. You contend that these statements are "accident reports" as contemplated by V.T.C.S. art. 6701d, section 47.¹ We disagree. Section 47 specifically applies only to "accident reports," not to statements made by persons involved in the accident. See Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making particular information confidential). Accordingly, we conclude that you must release the information contained in Exhibit B to the requestor.

Exhibit C of the submitted information contains various documents revealing information about Mr. Sager's insurance coverage and personal finances. You contend that this information must be withheld from public disclosure as information confidential under the common-law right of privacy. Common-law privacy protects information if (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Financial information concerning an individual is in some cases protected by a common-law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3.

¹Effective September 1, 1995, art. 6701d was repealed and replaced as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71 (Vernon). However, section 47 of art. 6701d was amended by the 74th Legislature without reference to the repeal of art. 6701d. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413 (Vernon). The repeal of a statute by a code does not affect an amendment of the statute by the same legislature that enacted the code and the amendment is preserved and given effect as part of the code provision. See Gov't Code § 311.031(c).

We agree that Mr. Sager's Personal Financial Statement relating to a loan application is highly intimate or embarrassing and is of no legitimate concern to the public and must, therefore, be withheld from required public disclosure pursuant to section 552.101 of the Government Code.

With regard to the documents revealing information about Mr. Sager's insurance coverage, we believe that Mr. Sager's choice of carrier and amount of coverage is highly intimate or embarrassing and is of no legitimate concern to the public. Therefore, the information which either identifies the insurance carrier or the amount of coverage must be withheld under the common-law right of privacy and section 552.101 of the Government Code. The remainder of these documents are not highly intimate or embarrassing and may not be withheld from public disclosure under section 552.101, including the references to the private investigator and the investigative firm hired by the insurance company to investigate this accident.

Finally, Exhibit D of the submitted information contains jury questionnaires and related information pertaining to prospective jurors which you contend is made confidential by article 35.29 of the Code of Criminal Procedure. Article 35.29 provides, in pertinent part:

[i]nformation collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential

Having reviewed the contents of Exhibit D, we conclude that this information must be withheld from required public disclosure pursuant to section 552.101 in conjunction with article 35.29.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

Ref: ID# 39720

Enclosures: Marked documents

cc: Mr. Tommy Jacks
Mithoff & Jacks, L.L.P.
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(w/o enclosures)