



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 13, 2003

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2003-1701

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177844.

The Travis County Sheriff's Office (the "sheriff") received a request for information pertaining to the arrest of a named individual on January 16, 2001. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information

concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we agree that some of the information you seek to withhold under section 552.101 is protected by common-law privacy. Accordingly, we have marked information that the sheriff must withhold under section 552.101 in conjunction with common-law privacy.

The responsive reports also contain social security numbers that you claim are excepted from disclosure under section 552.101 and common-law privacy. You acknowledge that the social security numbers were neither obtained nor maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. Consequently, the social security numbers are not made confidential under the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). You contend, however, that the social security numbers at issue are protected under common-law privacy. This office has previously determined that social security numbers are not protected under common-law privacy. *Id.* at 2 (1994); Open Records Decision No. 169 at 8 (1977). Thus, the sheriff may not withhold the social security numbers under section 552.101.

You also contend that the responsive records contain criminal history information that is protected by section 552.101 in conjunction with common-law privacy. You contend that the responsive information includes a compilation of the named individual's criminal history. When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). You claim that a portion of the responsive information consists of a compilation of local law enforcement records. We determine that to the extent the responsive records contain a compilation of the named individual's criminal history, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with the common-law right of privacy pursuant to the decision in *Reporters Committee*.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing

*Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). In Open Records Decision Nos. 430 (1985), 428 (1985), and 185 (1978), we concluded that inmate visitor logs, mail logs, and correspondence lists which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional law.

Citing to Open Records Decision Nos. 430, 428, and 185, you contend that the information at issue includes jail records that are confidential by law. Upon review, however, we find that the jail records at issue do not contain any private information about an inmate. Thus, the sheriff may not withhold the jail records you have marked under section 552.101 in conjunction with constitutional privacy. Furthermore, you have not raised any other specific confidentiality provision that would allow the sheriff to withhold the marked jail records pursuant section 552.101. *See* Open Records Decision No 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Accordingly, we determine that the sheriff may not withhold the marked jail records as information made confidential by law.

Section 552.101 also encompasses information that other statutes make confidential. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the 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). 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). Furthermore, 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. Therefore, you must withhold any CHRI falling within the ambit of these state and federal regulations from the requestor pursuant to section 552.101 of the Government Code.

Finally, we note that the information at issue contains information excepted under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state[.]

We have marked Texas driver's license numbers that the sheriff must withhold pursuant to section 552.130 of the Government Code.

In summary, we have marked information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the submitted records contain a compilation of the named individuals' criminal history, such information must be withheld under section 552.101 in conjunction with common-law privacy. Any criminal history record information obtained from the TCIC and NCIC networks must be withheld pursuant to section 552.101 in conjunction with chapter 411 of the Government Code and federal regulations. Texas driver's license numbers must be withheld under section 552.130 of the Government Code. The remainder of the responsive information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/sdk

Ref: ID# 177844

Enc: Submitted documents

c: Mr. Ken E. Jarrad  
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(w/o enclosures)