



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2004

Ms. Brandy Easley
Records Clerk
Van Zandt County Sheriff's Office
1220 West Dallas Street
Canton, Texas 75103

OR2004-2068

Dear Ms. Easley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197689.

The Van Zandt County Sheriff's Office (the "sheriff") received a request for (1) records of all calls answered from January 1, 2001 to November 30, 2003 and (2) documents relating to the criteria used to classify sheriff's department and citizen contact as a "call for service." You claim that some of the information that is responsive to part 1 of the request is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. With regard to part 2 of the request, you inform us that "there is no information to withhold." We therefore assume that you have released any information encompassed by part 2 of the request that was held by or available to the sheriff when he received the request. If not, then any such information must be released at this time. *See Gov't Code* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000). We note that the Public Information Act, chapter 552 of the Government Code, does not require the release of information that did not exist when the sheriff received this request or the creation of responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local

emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are 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. Therefore, if Van Zandt County is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety Code, the originating telephone numbers and addresses of 911 callers that were furnished by a service supplier must be withheld from disclosure under section 552.101 of the Government Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”); see also Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. See *id.* 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 CHRI except to another criminal justice agency for a criminal justice purpose. See Gov’t Code § 411.089(b).¹ Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Likewise, CHRI held by the Texas Department of Public Safety (the “DPS”) or another criminal justice agency must be withheld from the public as provided by subchapter F of chapter 411 of the Government Code. Furthermore, law enforcement information compiled by a governmental entity as to whether a particular individual is a criminal suspect, arrested person, or defendant takes on a character that implicates the individual’s common-law 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); Open Records Decision No. 616 at 2-3 (1993).² We have marked the information that the sheriff must withhold under

¹We note that the statutory definition of CHRI does not encompass driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. See Gov’t Code § 411.082(2) (defining “criminal history record information”).

²The right to privacy under *Reporters Committee* is not applicable, however, to information that relates to routine traffic violations. Cf. Gov’t Code § 411.082(2).

section 552.101 of the Government Code if the information constitutes CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code or criminal history information that is private under *Reporters Committee*.

Law enforcement information concerning juvenile offenders is made confidential under section 58.007 of the Family Code. This section provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c); *see also id.* § 51.03(a)-(b) (defining delinquent conduct and conduct indicating need for supervision). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We have marked the information that the sheriff must withhold under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

A social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers contained in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the sheriff to obtain or maintain these social security numbers. Thus, we have no basis for concluding that these social security numbers were obtained or are maintained under such a law and are therefore confidential under the federal law. We caution you,

however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing any social security number, the sheriff should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 422 at 1-2 (1984) (information that would reveal that an individual attempted suicide), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress), 393 (1983) (information that identifies or tends to identify sexual assault victim), 339 (1982) (same). This office also has determined that personal financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked the information that the sheriff must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.³

³We note that the fact that a person committed suicide is not protected by common-law privacy under section 552.101, because a deceased individual has no right to privacy. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy is personal right that lapses at death).

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cell phone numbers, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Personal pager and cell phone numbers paid for by peace officers employed by the sheriff must be withheld under section 552.117(a)(2). *See* Open Records Decision No. 670 at 6(2001) (statutory predecessor to Gov't Code § 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). We also have marked a small amount of family member information that the sheriff must withhold under section 552.117(a)(2) if the information relates to a peace officer employed by the sheriff. We note that a pager or cell phone number that is provided to a peace officer at public expense may not be withheld from the public under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use).

The pager or cell phone number of an individual other than a peace officer employed by the sheriff may be excepted from disclosure under 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department; and
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and

- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). Thus, to the extent that the pager and cell phone numbers contained in the submitted documents are not those of peace officers employed by the sheriff, a pager or cell phone number paid for by an individual listed in section 552.1175(a) is excepted from disclosure under section 552.1175 if the individual elects to restrict access to the individual's pager or cell phone number in accordance with section 552.1175(b). Likewise, in the event that the family member information that we have marked does not pertain to a peace officer employed by the sheriff, the marked information is excepted from disclosure under section 552.1175 if it relates to an individual listed in section 552.1175(a) who elected to restrict access to the individual's family member information in accordance with section 552.1175(b).

Section 552.130 of the Government Code excepts from public disclosure information that relates to:

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

Gov't Code § 552.130(a)(1)-(2). Section 552.103(a)(1) is applicable to Texas operator's or driver's license or permit numbers. Section 552.130(a)(2) is applicable to Texas license plate numbers, Texas motor vehicle registration numbers, and Texas vehicle identification numbers. The sheriff must withhold all of these types of information under section 552.130. We note, however, that some of the highlighted information in the submitted documents appears to relate to boats. Section 552.130 is not applicable to information that relates to a boat registration, and the sheriff may not withhold that type of information under section 552.130.

In summary: (1) if Van Zandt County is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety Code, the originating telephone numbers and addresses of 911 callers that were furnished by a service supplier must be withheld from disclosure under section 552.101 of the Government Code; (2) any CHRI obtained from the NCIC or TCIC that is confidential under federal law or subchapter F of chapter 411 of the Government Code, or any compilation of criminal history information that is private under *Reporters Committee*, must be withheld under section 552.101; (3) the sheriff must withhold information relating to juvenile offenders under section 552.101 in conjunction with 58.007 of the Family Code; (4) the sheriff may be required to withhold social security numbers under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (5) the sheriff must withhold information that is protected by common-law privacy under section 552.101; (6) the

sheriff must withhold a personal pager or cell phone number paid for by a peace officer employed by the sheriff, as well as the family member information of a peace officer employed by the sheriff, under section 552.117(a)(2); (7) a personal pager or cell phone number paid for by an individual listed in section 552.1175(a) and such an individual's family member information are excepted from disclosure under section 552.1175 if the individual elects to restrict access to that information in accordance with section 552.1175(b); and (8) Texas operator's or driver's license or permit numbers, Texas license plate numbers, Texas motor vehicle registration numbers, and Texas vehicle identification numbers must be withheld under section 552.130. The rest of the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 197689

Enc: Submitted documents

c: Mr. Donald L. Dixon
P.O. Box 636
Edgewood, Texas 75117
(w/o enclosures)