



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2006

Ms. Donna L. Clarke  
Assistant Criminal District Attorney  
Lubbock County  
P.O. Box 10536  
Lubbock, Texas 79408

OR2006-02175

Dear Ms. Clarke:

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# 246868.

The Lubbock County Sheriff's Office (the "sheriff") received a request for information related to twenty-one named individuals. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information relating to routine

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

traffic violations is not excepted from release under section 552.101 in conjunction with common law privacy and *Reporters Committee*. Cf. Gov't Code § 411.082(2)(B).

The present request asks for all information held by the sheriff concerning certain named individuals. We find that this request for unspecified law enforcement records requires the sheriff to compile the criminal history of the individuals and thus implicates the individuals' rights to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the sheriff maintains any law enforcement information depicting any of the named individuals as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses information made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center 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. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. See *id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find that no portion of the information at issue consists of CHRI that is confidential pursuant to chapter 411. Therefore, the information may not be withheld under section 552.101 on that basis.

Next, we note that the submitted information includes Texas motor vehicle record information. Section 552.130 of the Government Code provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1),(2). The sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130.

Finally, we note that the submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the sheriff must withhold the social security number contained in the submitted information under section 552.147.<sup>2</sup>

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the sheriff must withhold: 1) any law enforcement information depicting any of the named individuals as a suspect, arrestee, or criminal defendant pursuant to section 552.101 in conjunction with common law privacy and *Reporters Committee*, 2) the Texas motor vehicle record information we have marked under section 552.130; and 3) the social security number we have marked under section 552.147. The remainder of the 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments with in 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/er

Ref: ID# 246868

Enc. Submitted documents

c: Mr. Fred Slozer  
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(w/o enclosures)