



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2009

Ms. Michelle L. Villarreal  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2009-03354

Dear Ms. Villarreal:

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# 337189 (Reference No. LGL-08-1219).

The Waco Police Department (the "department") received a request for information relating to all charges, arrests, incarcerations, or convictions pertaining to a named individual, including specified reports. You state you have released a portion of the requested information. You indicate you will withhold social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to this request because it does not pertain to a charge, arrest, incarceration, or conviction of the named individual. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request. Accordingly, we will address your arguments with regard to the responsive information.

Next, we note you have only submitted information related to three of the four specified incidents. To the extent other information responsive to the request existed on the date the department received this request, we assume you have released it. If you have not released this information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also*

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a government 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.

Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You claim the present request requires the department to compile the criminal history of the named individual. We agree the present request, in part, requires the department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.<sup>2</sup> However, the request also seeks specified reports which are not considered part of a compilation of the individual's criminal history. Thus, these specified reports may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address the exceptions to disclosure you claim for this information.

Section 552.101 also encompasses information another statute makes confidential. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"), which 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 Texas 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)

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against the release of this information.

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 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). We find a portion of the submitted information is CHRI generated by TCIC or NCIC. Accordingly, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses chapter 560 of the Government Code which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). Accordingly, the department must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You claim report number 05-59411 is subject to section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report number 05-59411 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable this report.

Section 552.108, however, does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of basic information, the department may withhold report number 05-59411 under section 552.108(a)(2).<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your arguments for the Texas motor vehicle information contained in this information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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). We agree the Texas license plate number and driver's license information you have marked, as well as the additional information we have marked, must be withheld under section 552.130. However, you have also marked the state of issuance of the driver's license. Generally, this office does not withhold the state of issuance because in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the State of Texas. Accordingly, except for the state of issuance, the department must withhold the marked information under section 552.130 of the Government Code.

In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code and the fingerprints we have marked under section 552.101 in conjunction with 560.003 of the Government Code. Except for basic information, the department may withhold report number 05-59411 under section 552.108(a)(2). Except for the state of issuance, the department must withhold the marked Texas motor vehicle information under section 552.130. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 337189

Enc. Submitted documents

c: Requestor  
(w/o enclosures)