



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2009

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County Texas
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-06376

Dear Ms. Sanchez:

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# 342848.

The El Paso County District Attorney's Office (the "district attorney") received a request for complete offense reports and the TDC summary for a specified case involving a named individual. You state the district attorney does not maintain TDC summaries.¹ You claim portions of the submitted information are 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.

Initially, you inform us the requestor has excluded photographs from her request. Therefore, the submitted photographs, which we have marked, are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney is not required to release that information in response to the request.

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

We next address your arguments for the submitted responsive information. 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 of the Government Code encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. You assert some of the submitted information is subject to this section. We note, however, that section 58.007 is inapplicable because the conduct in the report at issue occurred in 1995. Former section 51.14 of the Family Code is the applicable provision in this instance. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2).

In this instance, case number 95-081249 involves juvenile conduct that occurred in March of 1995. Therefore, case number 95-081249 is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

Next, you raise section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, which deems confidential criminal history information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). 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. Although you indicate the submitted information contains criminal history information that is confidential under chapter 411, upon review we find that none of the remaining information constitutes CHRI for the purposes of chapter 411. Therefore, the district attorney may not withhold any portion of the remaining information on that basis.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *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). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the district attorney 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.

Next, you raise section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. We understand El Paso County is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You claim Attachment C may contain information subject to section 772.318, however, you do not inform us if the information at issue was furnished by a 9-1-1 service supplier. Therefore, to the extent the originating telephone numbers and addresses of the 9-1-1 callers, which we have marked, were supplied by a 9-1-1 service supplier, this information is confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. However, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code and must be released.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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 demonstrated. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). The lien information we have marked constitutes personal financial information. Therefore, the district attorney must withhold the lien information we have marked under section 552.101 in conjunction with common-law privacy.

This office has also determined that a compilation of an individual's criminal history record information 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You claim Attachment B contains compiled criminal history information. We find, however, the remaining information in Attachment B relates to the specified case and, thus, does not implicate the named individual's common-law privacy concerns. Therefore, none of the information in Attachment B may be withheld under section 552.101 in conjunction with common-law privacy as a compilation of criminal history.

Next, you raise section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record information. We also note the purpose of section 552.130 is to protect the privacy interests of individuals. Since the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, the district attorney may not withhold Texas driver's license information pertaining to the deceased individual under section 552.130. In this instance, we are unable to determine whether a living individual owns an interest in certain motor vehicle registration information we have marked under section 552.130. Thus, if a living individual does own an interest in this vehicle, then the information we have marked must be withheld under section 552.130. However, if this vehicle was owned solely by a deceased individual, the information we marked may not be withheld under section 552.130. The district attorney must withhold the remaining Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

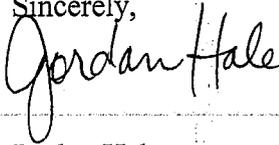
In summary, the district attorney must withhold case number 95-081249 under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. The district attorney must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. To the extent the originating telephone numbers and addresses of the 9-1-1 callers, which we have marked, were supplied by a 9-1-1 service supplier, the district attorney must withhold this information under section 552.101 in conjunction with section 772.318 of the Health and

Safety Code. The personal financial information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. The district attorney must withhold the information we marked under section 552.130 of the Government Code, to the extent it pertains to living individuals. The remaining responsive information must be released.²

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, 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 342848

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note the remaining responsive information contains social security numbers. 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.