



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

Ms. Vivian J. Harvey
Assistant County Attorney
Henderson County Attorney
101 East Tyler Street, Room 100
Athens, Texas 75751

OR2009-06714

Dear Ms. Harvey:

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# 343422.

The Henderson County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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. This section 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). The types 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. *Id.* at 683. This office has also found that 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. United States 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. While you argue that the request requires the sheriff to compile unspecified law enforcement records concerning a named individual, we note that in this instance the requestor seeks information pertaining to a specified incident. Thus, this request does not implicate the common-law privacy of the individual at issue. Accordingly, the sheriff may not withhold the submitted information under section 552.101 of the Government Code on that basis. We note, however, that some of the submitted documents include information that is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the sheriff must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor is listed as the wife of the individual to whom the submitted information pertains within the submitted documents. As such, the requestor may have a special right of access to the information at issue as an authorized representative. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative requests information concerning that individual).¹ Thus, if the requestor has a right of access to the information at issue as an authorized representative under section 552.023, then the sheriff may not withhold any of the information we have marked under section 552.101 in conjunction with common-law privacy and must release this information to the requestor. However, if the requestor does not have a right of access under section 552.023, then the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we observe that the remaining information contains criminal history record information ("CHRI"). Section 552.101 also encompasses chapter 411 of the Government Code, which makes criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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).

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

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. 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. We note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history record information. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). We have marked the CHRI that the sheriff must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Finally, we note that some of the remaining information is subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.² Gov't Code § 552.130. We note because section 552.130 protects personal privacy, the requestor, who is listed in the submitted information, has a right of access to her own Texas motor vehicle information. *See id.* § 552.023(a); ORD 481 at 4. We also note that if the requestor is acting as her husband's authorized representative, then she has a right of access to the information at issue pursuant to section 552.023 of the Government Code, and it may not be withheld under section 552.130. *See id.* § 552.023. However, if the requestor is not acting as her husband's authorized representative, then her husband's Texas motor vehicle record information, which we have marked, must be withheld under section 552.130 of the Government Code.

In summary, if the requestor has a right of access as her husband's authorized representative under section 552.023 of the Government Code, then the sheriff may not withhold the information we have marked under section 552.101 on privacy grounds or the information we have marked under section 552.130. If the requestor is not acting as her husband's authorized representative, then the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and section 552.130. In either event, the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The remaining information must be released.³

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note that the remaining 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.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 343422

Enc. Submitted documents

cc: Requestor
(w/o enclosures)