



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2009

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

OR2009-06781

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# 343818.

The El Paso County District Attorney's Office (the "district attorney") received a request for a copy of the "El Paso County Dims manual 2008."<sup>1</sup> You state some information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* You claim the information submitted as Attachment B consists of CHRI excepted under chapter 411 of the Government Code. Upon review, however, we find none of this information was generated by the NCIC or

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<sup>1</sup>You state that the most current version of this manual, which you consider responsive to this request, is dated October, 2000.

TCIC. Accordingly, we find you have not demonstrated how any portion of Attachment B constitutes CHRI for purposes of chapter 411, and no portion of this information may be withheld on this basis.

We note portions of the submitted information are subject to common-law privacy. 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 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information). Upon review, we find a portion of the submitted information is highly embarrassing information that is not of legitimate public interest. Therefore, the district attorney must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024. Additionally, section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is paid for by the employee with his or her own funds. *See Open Records Decision No. 670 at 6 (2001)* (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The district attorney may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that the individuals whose information is at issue elected to keep their private information confidential prior to the date the district attorney received the current request for information. Thus, the district attorney must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the marked cellular telephone number may only be withheld if the cellular telephone service was not paid for by the district attorney.

Section 552.130 of the Government Code 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 some of the information you have marked under section 552.130 does not constitute Texas motor vehicle record information for the purpose of section 552.130 and may not be withheld on that basis. Accordingly, the district attorney must only withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the district attorney must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the information you have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may only be withheld if the cellular telephone service was not paid for by the district attorney. The district attorney must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>2</sup>

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

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<sup>2</sup>We note the information being released contains a social security number. 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.

Ref: ID# 343818

Enc. Submitted documents

c: Requestor  
(w/o enclosures)