



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2009

Mr. Richard P. Bianchi
County Attorney
Aransas County
301 North Live Oak Street
Rockport, Texas 78382

OR2009-07739

Dear Mr. Bianchi:

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# 345120.

The Aransas County Attorney's Office (the "county attorney") received a request for information regarding a specified incident.¹ You indicate the county attorney has provided most of the requested information to the requestor. You claim portions of the submitted booking sheet, investigation notes, and criminal history report are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state the county attorney notified an interested third party of the request and of his right to submit arguments to this office as to why the submitted information pertaining to him should not be released.² *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the county attorney's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the written request for information. *See id.* § 552.301(e)(1)(B). As of the date of this letter, however, you have

¹As you have not submitted a copy of the request, we create our description from your brief.

²As of the date of this letter, we have not received comments from the third party.

not submitted to this office a copy of the written request for information. Consequently, we find the county attorney failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You assert the submitted investigation notes and criminal history report are excepted under section 552.108. This section, however, is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the submitted investigation notes and criminal history report may not be withheld under section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure for the investigation notes, they must be released. However, because section 552.101 can provide a compelling reason to withhold information, we will consider whether or not any of the remaining information is excepted from disclosure under the Act.

You claim portions of the submitted booking sheet are confidential under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, you have not directed our attention to any law, nor are we aware of any law, that makes the information you have marked in the booking sheet confidential under section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the county attorney may not withhold any part of the booking sheet under section 552.101 of the Government Code.

Section 552.101 encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except 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) 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. Similarly, 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. Accordingly, the county attorney must withhold the criminal history report we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.³

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). We note the remaining information contains lien information, which we have marked, that constitutes personal financial information, for which we find there is no legitimate public interest in releasing. Accordingly, the county attorney must withhold the marked lien information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains Texas motor vehicle record 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.⁴ Gov't Code § 552.130(a)(1), (2). Thus, the county attorney must withhold the Texas driver's license number, license plate number, and vehicle identification number we have marked in the remaining information under section 552.130 of the Government Code.

In summary, the county attorney must withhold the marked criminal history report under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; the marked lien information under section 552.101 of the Government Code in conjunction with common-law privacy; and the marked Texas motor

³As our ruling for this information is dispositive, we need not address your argument against disclosure for this information.

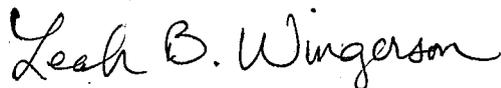
⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

vehicle record information under section 552.130 of the Government Code. The remaining information must be released.⁵

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 345120

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Kevin Joseph Mattes
1922 Sherwood
Aransas Pass, Texas 78336
(w/o enclosures)

⁵The remaining information contains a social security number. 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.