



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2009

Ms. Mary Salluce  
Open Government Attorney  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2009-09003

Dear Ms. Salluce:

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# 347693 (DFPS No. 2009-0280).

The Texas Department of Family and Protective Services ("DFPS") received a request for fourteen categories of information related to certain classes of persons on whom DFPS has conducted criminal background checks within the twenty-four months prior to the request.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.<sup>2</sup>

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<sup>1</sup>We note that DFPS asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 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 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.* 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.

We note that the information at issue consists only of the name, address, date of birth, gender, race, ethnicity, "relationship to requestor," hire date, facility name, and "op type" for each person within the requested classes. This information does not contain any CHRI; therefore, DFPS may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

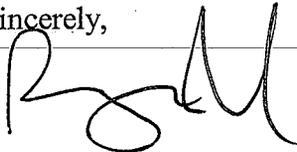
Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). This exception applies when the release of information would result in a violation of the common-law right to privacy. *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common-law right to privacy protects information that (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) is of no legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. You have not established that any part of the submitted information is highly intimate or embarrassing and not of legitimate public concern; therefore, DFPS may not withhold any of this information under

section 552.102 of the Government Code. As you raise no further exceptions against disclosure, DFPS must release the information at issue to the requestor.

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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/rl

Ref: ID# 347693

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)