



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2009

Mr. Arthur Provenghi  
Assistant County Attorney  
County Courthouse  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2009-10268

Dear Mr. Provenghi:

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# 350109.

The El Paso County Sheriff's Office (the "sheriff") received a request for all information concerning a specified arrest of a named individual, including photographs and fingerprints. You state that the sheriff has released some of the requested information. 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.

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 exception encompasses information that other statutes make confidential. Section 1304(b) of title 8 of the United States Code addresses the confidentiality of records of the registration of aliens under section 1301 of the United States Code. Section 1304(b) provides:

(b) Confidential Nature

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

- (1) pursuant to section 1357(f)(2) of this title, and
- (2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). You state Attachment E contains a confidential alien registration record. Upon review, we agree the Border Crossing Card in Attachment E is subject to section 1304(b). *See* 8 C.F.R. § 264.1(a) (providing detailed list of prescribed registration forms). Therefore, the sheriff must withhold the Border Crossing Card, which we have marked, under section 552.101 of the Government Code in conjunction with title 8, section 1304(b) of the United States Code.

Section 552.101 of the Government Code also encompasses confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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. 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 the 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 the 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. Upon review, we find that the information in Attachment B, as well as the information we have marked in Attachment F, consists of CHRI and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses Chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See 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 fingerprint information at issue. Therefore, the sheriff must withhold the

fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

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). The type 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. We find that portions of the submitted information, which we have marked, are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle driver's license or a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the Texas driver's license information and Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>1</sup>

In summary, (1) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with title 8, section 1304(b) of the United States Code; (2) the sheriff must withhold the information in Attachment B, as well as the information we have marked in Attachment F, under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (3) the sheriff must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code; (4) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) the sheriff must 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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

<sup>2</sup>We note 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 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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

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CDSA/eeg

Ref: ID# 350109

Enc. Submitted documents

c: Requestor  
(w/o enclosures)