



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2009

Mr. Christopher D. Taylor
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-11160

Dear Mr. Taylor:

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# 352514 (LGL-09-580).

The Waco Police Department (the "department") received a request for a specified police report. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted police report involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with intent to harm or defraud another, obtains, possesses, transfers, or uses identifying information of . . . another person without the other person's consent[.]" Penal Code § 32.51(b). For purposes of section 32.51, "identifying information" includes an individual's name and financial institution account number. *Id.* § 32.51(a)(1)(A), (C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides as follows:

- (a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005 if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

Upon review, we find the submitted report involves an alleged fraudulent use of identifying information, which constitutes a violation of section 32.51 of the Penal Code. In this instance, the requestor is one of the victims listed in the report and the alleged offense occurred after September 1, 2005. Accordingly, the submitted information is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor except to the extent it contains confidential information. You seek to withhold the report under section 552.108 of the Government Code. As a general rule, however, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, section 552.108 is not applicable to the submitted information and it may not be withheld on that basis. However, you raise section 552.130 of the Government Code for portions of the remaining information and we note portions of the remaining information are subject to sections 552.101, 552.136, and 552.137 of the Government Code, which are confidentiality provisions.¹ We will therefore address these exceptions.

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 information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Center or by the Texas Crime Information Center is confidential. 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 Texas 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* 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. 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. Accordingly, you must withhold the CHRI that we have marked in the submitted information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 of the Government Code 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). This office has found a compilation of a private individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *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). Upon review, we find a portion of the submitted information, which we have marked, constitutes highly intimate or embarrassing information of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a). We note that section 552.130 does not apply to out-of-state motor vehicle record information. Upon review, we find the department must

withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We note portions of the remaining information are subject to section 552.136 of the Government Code. Section 552.136(b) states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). However, the purpose of section 552.136 is to protect the privacy interests of individuals. Thus, the requestor has a right of access to his own account information. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987). Moreover, the right of privacy lapses at death; thus information that pertains solely to a deceased individual may not be withheld under section 552.136. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981). We note the submitted information reveals that at least one of the victims in the submitted information is deceased. Thus, to the extent a living person has an ownership interest in the account information we have marked that pertains to a deceased individual, it must be withheld. Conversely, if no living person owns an interest in an account pertaining to a deceased individual, the department must release the marked account information pertaining to the deceased individual. In either case, the department must withhold the remaining information we have marked that does not pertain to a deceased individual under section 552.136 of the Government Code.

Finally, we note the remaining information includes an e-mail address subject to section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). Accordingly, the personal e-mail address we have marked in the submitted documents must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

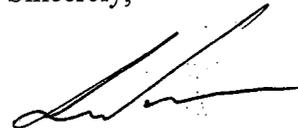
In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; (4) the access device numbers we have marked under section 552.136 of the Government Code, but must release the access device numbers pertaining to a deceased individual if no living person possesses an interest in this information; and (4) the e-mail address we have marked,

unless the owner of the e-mail address consents to its release, under section 552.137 of the Government Code. The department must release the remaining information.²

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 352514

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note you have highlighted social security numbers in the remaining information. 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. The requestor has a right, however, to his own social security number. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We also note the deceased individual's social security number may not be withheld under section 552.147. Furthermore, because the information being released may be confidential with respect to the general public, the department should again seek a decision from this office should the department receive another request for this particular information from a different requestor.