



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2009

Mr. John D. Lestock  
Assistant City Attorney  
City of Paris  
P.O. Box 9037  
Paris, Texas 75461-9037

OR2009-14666

Dear Mr. Lestock:

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# 358657.

The Paris Police Department (the "department") received a request for the full content of case numbers 921777 and 003211.<sup>1</sup> You state you have furnished a copy of case number 921777 and a redacted copy of case number 003211 to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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. Section 552.101 encompasses 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 Texas Department of Public Safety (the "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

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<sup>1</sup>You state the department sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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. We also note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. Upon review, we find that the information we have marked consists of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, the remaining information at issue does not consist of CHRI for purposes of chapter 411. Therefore, none of the remaining information is confidential under section 411.083, and the department may not withhold it under section 552.101 on that basis.

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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Information relating to an individual's current involvement in the criminal justice system is also not excepted under section 552.101 in conjunction with common-law privacy. Upon review, we determine that the remaining information you have marked under section 552.101 is not the type of information excepted from disclosure under common-law privacy. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

We note that the remaining information contains the fingerprints of two individuals, including the requestor. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to her own fingerprint under section 560.002(1)(A), and that information must be released. *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual

requests information concerning himself). The other individual's fingerprint, which we have marked, must be withheld from the requestor under section 560.003.

In summary, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The department must also withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 358657

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that you have redacted the requestor's 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. Gov't Code § 552.147. However, in this instance, the requestor has a right of access to her own social security number and it may not be withheld from her under section 552.147. *See generally id.* § 552.023(b).