



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2009

Ms. Christina Sanchez  
Assistant County Attorney  
El Paso County  
500 E. San Antonio, Room 503  
El Paso, Texas 79901

OR2009-15181

Dear Ms. Sanchez:

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# 359278.

The 34<sup>th</sup> Judicial District Attorney's Office (the "district attorney") received a request for information in the district attorney's file relating to a specified criminal case. You state you have released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

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<sup>1</sup>We note the exceptions in the Act are not law that makes information confidential for purposes of section 552.101.

Gov't Code § 552.022(a)(1). The submitted case file constitutes a completed investigation made by the district attorney. A completed investigation must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Although you seek to withhold the submitted information under section 552.111 of the Government Code, this section is a discretionary exception to disclosure that a governmental body may waive. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (discretionary exceptions generally). Accordingly, section 552.111 is not other law that makes information confidential for purposes of section 552.022. Therefore, the district attorney may not withhold any of the submitted information under section 552.111. The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the information at issue. Because sections 552.101, 552.108, 552.1325, 552.130, and 552.136 of the Government Code constitute other laws for section 552.022(a)(1) purposes, we will address the applicability of these exceptions to the submitted information.<sup>2</sup>

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. You contend the information in Attachment D is confidential under article 39.14 of the Code of Criminal Procedure. However, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Crim. Proc Code art. 39.14. Article 39.14 does not expressly make information confidential for section 552.101 purposes. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure); 478 at 2-3 (1987). Consequently, we conclude the district attorney may not withhold the information in Attachment D pursuant to section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure.

You also seek to withhold the information in Attachment D under section 552.108 of the Government Code. Section 552.108 provides in part:

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<sup>2</sup>The 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).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the documents in Attachment D were written and prepared by the district attorney in anticipation of or in preparation for trial. Thus, you assert the documents reflect the mental impressions and legal reasoning of the district attorney. Upon review, we agree subsections 552.108(a)(4) and (b)(3) are applicable to most of the documents in Attachment D. However, one of the documents in Attachment D consists of a print out. We note this document is contained in a separate Attachment for which you do not claim section 552.108. Thus, you have not demonstrated how this information, which we have marked, was prepared by an attorney representing the state or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney may not withhold the information we have marked in

Attachment D under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>3</sup> Accordingly, with the exception of the document we have marked, the district attorney may withhold Attachment D under section 552.108(a)(4) and (b)(3) of the Government Code.

Section 552.101 of the Government Code also encompasses section 1304(b) of title 8 of the United States Code, which 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). The alien registration information you have marked is confidential under title 8, section 1304(b) of the United States Code and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides the following:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate . . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

(1) under a subpoena or authority of other law; or

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25. Because neither exception to confidentiality applies to the information in this instance, we agree that the district attorney must withhold the autopsy

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your argument under section 35.29 of the Code of Criminal Procedure.

photographs in Attachment F pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Health & Safety Code §§ 772.118, .218, .318; *see also* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. ORD 649 at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You indicate the City of El Paso is part of an emergency communication district established under section 772.318. To the extent the telephone numbers you have marked in Attachment G are the originating telephone numbers obtained from a 9-1-1 service provider, the district attorney must withhold the marked telephone numbers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. To the extent the marked telephone numbers in Attachment G are not the originating telephone numbers obtained from a 9-1-1 service provider, they may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 also encompasses section 550.065 of the Transportation Code. The submitted information contains a ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the district attorney with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the district attorney must withhold the submitted ST-3 accident report form, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

We also understand the district attorney to raise section 730.004 of the Transportation Code. Section 730.004 of the Transportation Code is also encompassed by section 552.101, and provides:

Notwithstanding any other provisions of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency or political subdivision of this state, that compiles or maintains motor vehicle records.

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

*Id.* § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not demonstrated the district attorney compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the district attorney. Accordingly, no part of the remaining information may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.101 also encompasses section 560.003 of the Government Code, which governs the public availability of fingerprints. 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). We note the requestor appears to be the spouse of the individual whose fingerprints are at issue. Thus, the requestor may be the authorized representative of that individual. Therefore, if the requestor is the individual's authorized representative, then the fingerprints you have marked must be released to this requestor pursuant to section 560.002(1)(A). If the requestor is not the

individual's authorized representative, then the marked fingerprints must be withheld under section 552.101 in conjunction with section 560.003.

Section 552.101 also encompasses chapter 411 of the Government Code. Chapter 411 deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. *Id.* § 411.083(a). CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). 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 (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 DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code.<sup>4</sup> *See* Gov't Code § 411.083. Upon review, we find a portion of the submitted information is CHRI that is confidential under section 411.083. Thus, the district attorney must withhold the CHRI we have marked under section 552.101 of the Government Code. However, you have not demonstrated the remaining information you have marked constitutes CHRI for purposes of chapter 411. Accordingly, no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that common-law privacy protects personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). This office has also found that a compilation of an individual's criminal history 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. Upon review, we find portions of the submitted information are intimate or embarrassing and not of legitimate concern to the public. Therefore, the district attorney must generally withhold the

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<sup>4</sup>Although you assert release of a portion of the submitted information is prohibited by section 411.085 of the Government Code, that provision merely provides the penalties for the "Unauthorized Obtaining, Use, or Disclosure of Criminal History Record Information." Gov't Code § 411.085. Section 411.083 is applicable to the dissemination of CHRI.

information we have marked under section 552.101 in conjunction with common-law privacy. However, as noted above, the requestor may be the authorized representative of one of the individuals whose private information is at issue. If the requestor is the authorized representative of this individual, then she has a special right of access to information that would ordinarily be withheld to protect his privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Accordingly, such information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the authorized representative of this individual, then this information, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy. In either case, the information pertaining to other individuals must be withheld under section 552.101 in conjunction with common-law privacy.

You assert information in Attachment H is excepted under section 552.1325 of the Government Code, which provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. *Crim. Proc. Code* § 56.32(a)(10), (11). Attachment H consists of two victim impact statements as defined by article 56.03 of the Code of Criminal Procedure that were completed by close relatives of the deceased victims. *See id.* § 56.03. The statements reflect the relatives have suffered mental harm as a result of the criminally injurious conduct that led to the victims' deaths. Thus, we find the relatives who completed the impact statements are victims for purposes of article 56.32, and are, thus, crime victims for purposes of section 552.1325. *See id.* § 56.32(a)(2)(D). Therefore, the district attorney must withhold the crime victims' names, addresses, telephone numbers, and other identifying

information we have marked in Attachment H under section 552.1325 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We note section 552.130 does not apply to out of state motor vehicle record information. Additionally, section 552.130 protects personal privacy. Thus, if this requestor is acting as the authorized representative of the above referenced individual, then she has a right of access to his Texas motor vehicle record information under section 552.023 of the Government Code, and the district attorney may not withhold this information under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). If the requestor is not acting as the above referenced individual's authorized representative, then the district attorney must withhold this individual's information, as well as the remaining information we have marked, under section 552.130.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, 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." Gov't Code § 552.136(b). Accordingly, the district attorney must generally withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. Section 552.136 is also based on privacy principles. Thus, if the requestor is acting as the above referenced individual's authorized representative, she has a right of access to his insurance policy information and it may not be withheld under section 552.136. *Id.* § 552.023. If the requestor is not acting as the above referenced individual's authorized representative, then the district attorney must withhold his insurance policy number, as well as the remaining insurance policy numbers we have marked, under section 552.136.

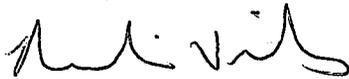
In summary, with the exception of the document we have marked, the district attorney may withhold Attachment D under subsections 552.108(a)(4) and (b)(3). The alien registration information you have marked must be withheld under section 552.101 in conjunction with section 1304(b) of title 8 of the United States Code. The submitted autopsy photographs in Attachment F must be withheld pursuant to section 552.101 of the Government Code in conjunction with article 49.25 of the Code of Criminal Procedure. To the extent the telephone numbers you have marked in Attachment G are the originating telephone numbers obtained from a 9-1-1 service provider, the district attorney must withhold the marked telephone numbers under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The district attorney must withhold the marked ST-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The fingerprints you have marked must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code, unless the requestor is the authorized representative of the individual whose fingerprints are at issue. The marked CHRI must be withheld under section 552.101 in conjunction with section 411.083 of the Government Code. The information we have marked within the submitted crime victim impact statements must be withheld under section 552.1325 of the

Government Code. If the requestor is not acting as the authorized representative of the above referenced individual, then the district attorney must withhold (1) the information we have marked under section 552.101 in conjunction with common-law privacy; (2) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) the insurance policy numbers we have marked under section 552.136 of the Government Code. If the requestor is acting as the above referenced individual's authorized representative, then the district attorney must release the private information, Texas motor vehicle record information and insurance policy numbers pertaining to this individual, but must withhold the remaining information we have marked under section 552.101 in conjunction with common-law privacy, section 552.130, and 552.136 of the Government Code. The remaining information must be released.<sup>5</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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/cc

Ref: ID# 359278

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note you have marked social security numbers contained 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. However, the requestor may have a right of access to one of the marked social security numbers. To the extent the requestor is the authorized representative of the above referenced individual, his social security number may not be withheld from her under section 552.147 of the Government Code. See Gov't Code § 552.023(b).