



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2009

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-16273

Dear Ms. McClellan:

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# 361830 (DPD Request Number 2009-7095).

The Dallas Police Department (the "department") received a request for a police report related to a named individual. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ 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. Section 552.101 encompasses chapter 560 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 ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The submitted information contains two sets of fingerprints. We note that one

¹Although you raise 42 U.S.C. § 405(c)(2)(C)(viii)(I) to withhold social security numbers, we note that the proper exception to raise for this information is section 552.147 of the Government Code.

set of fingerprints belongs to a deceased individual. Laws making this type of information confidential are intended to protect individual's privacy. *See id.* Because the right of privacy is purely personal and lapses at death, the fingerprints of the deceased individual may not be withheld on the basis of sections 560.001, 560.002, and 560.003. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-67 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Therefore, the department may not withhold the fingerprints you have marked that belong to a deceased individual under section 552.101 in conjunction with section 560.003 of the Government Code. However, we find that section 560.003 does apply to the remaining set of fingerprints that you have marked. Section 560.002 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[.]” Gov’t Code § 560.002(1)(A). Thus, if the requestor in this instance is the individual’s authorized representative, then the fingerprints you have marked for that individual 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 criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). 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 DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Section 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but 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.* §§ 411.090-411.027. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. We note that, because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from DPS or another criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. 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. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code.²

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, as previously mentioned, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *See Moore*, 589 S.W.2d at 491; *see also* ORD 272 at 1. Upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You also assert that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information you have marked under section 552.130.

²We note that an individual can obtain his own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ Therefore, the department may withhold the social security numbers contained in the submitted information under section 552.147.

We note that the requestor may be the authorized representative of the named individual whose private information is at issue under sections 552.101 in conjunction with common-law privacy, 552.130, and 552.147. If the requestor is the authorized representative of the named 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). If the requestor is not acting as the above referenced individual’s authorized representative, then the department must withhold the information marked under sections 552.101 in conjunction with common-law privacy, 552.130, and 552.147 of the Government Code.

In summary: (1) the department must withhold the fingerprints of the named individual that you have marked under section 552.101 in conjunction with section 560.003 of the Government Code, unless the requestor has a right of access as the individual’s authorized representative; (2) the department must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code; (3) the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; (4) the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code; and (5) the department may withhold the social security numbers you have marked under section 552.147 of the Government Code. However, if the requestor has a right of access as the authorized representative of the named individual, the department may not withhold the marked information under sections 552.101 in conjunction with common-law privacy, 552.130, and 552.147. The remaining information must be released.

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)

³Section 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.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 361830

Enc. Submitted documents

c: Requestor
(w/o enclosures)