



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2009

Ms. Susan V. Case
Administrative Assistant
Gainesville Police Department
201 Santa Fe Street
Gainesville, Texas 76240-2255

OR2009-17338

Dear Ms. Case:

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# 363538.

The Gainesville Police Department (the "department") received a request for information relating to a specified traffic accident. You state the department will release some of the responsive information. You state the department does not have possession of some of the responsive information.¹ You claim portions of the submitted incident report 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common law privacy 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. *See Industrial Found. v. Texas 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. *See id.*

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed).

at 681-82. 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. *See* 540 S.W.2d at 683.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has also determined that other types of information are private under section 552.101. *See, e.g.,* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You contend that the information at issue is excepted from disclosure under common-law privacy. Upon review, we conclude that the information we have marked constitutes personal financial information that is confidential under common-law privacy. Accordingly, the department must withhold this information under section 552.101 of the Government Code. You further contend that information pertaining to the condition of the subject of the submitted report at the time of his arrest is confidential pursuant to privacy. However, we note the individual concerned was arrested and subsequently pled guilty for driving while intoxicated ("DWI"). Thus, although this information may be intimate or embarrassing, we find that there is a legitimate public interest in this information in the context of a DWI investigation. Thus, this information may not be withheld under common-law privacy. We also note that the requestor, as the attorney for the victim in this case, has a special right of access to information pertaining to his client that would otherwise be confidential under common-law privacy.² Furthermore, we find that none of the remaining information at issue is intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld on the basis of common-law privacy under section 552.101 of the Government Code.

²*See* Gov't Code § 552.023 (a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests").

Section 552.101 of the Government Code also 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. *See* 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 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 DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 -.1407. 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 chapter 411, subchapter F. We note that the term CHRI does not include driving record information. *See* Gov’t Code § 411.082(2)(B). We understand you to contend that a portion of the information at issue is confidential under chapter 411. Upon review, however, we find that none of the information at issue consists of criminal history record information subject to chapter 411 of the Government Code. Thus, none of the submitted information may be withheld on under section 552.101 of the Government Code.

We note the remaining information contains Texas motor vehicle record information subject to section 552.130 of the Government Code.³ This section excepts from disclosure information that relates 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). The department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130.

Section 552.136 of the Government Code provides 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.” *Id.* § 552.136(b); *see also* § 552.136(a) (defining “access device number”). The department must withhold the insurance policy number we have marked pursuant to section 552.136.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The

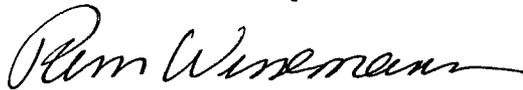
³The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department also must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code.⁴ The remaining information must be released.⁵

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 363538

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that the remaining information contains the arrestee'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.

⁵We note that because the requestor has a right of access to information being released pertaining to his client that would otherwise be confidential, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.