



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2009-17421

Dear Ms. Sandoval-Walker:

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# 363988.

The El Paso Police Department (the "department") received two requests from the same requestor for information pertaining to three types of offenses involving a named individual during a particular time period. You claim that the submitted information is 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, 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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 id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See Open Records*

Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that the 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 the compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You contend these requests for information require the department to compile the named individual's criminal history. We note, however, the requests are for records of specific offenses involving the named individual. Therefore, we find that these are not requests for a compilation of the individual's criminal history, and the department may not withhold any of the submitted information on that basis under section 552.101 of the Government Code. However, we have marked information that is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold this marked information under section 552.101 in conjunction with common-law privacy.

Section 552.101 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. 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 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-.127. We have marked the CHRI that the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You argue the remaining information contains telephone

numbers and addresses subject to chapter 772 of the Health and Safety Code. However, upon review, we find you have failed to demonstrate any portion of the remaining information contains the originating telephone number or address of a 9-1-1 caller that was furnished by a service supplier. We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

We note section 552.1175 of the Government Code may apply to a portion of the remaining information.<sup>1</sup> Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). *See, e.g.*, Open Records Decision No. 678 (2003) (ruling that confidentiality of information subject to section 552.1175 is dependent on a governmental body's receipt of an election of confidentiality from the individual whose information is at issue). Thus, to the extent the peace officer whose information is at issue elects to restrict access to the information we have marked in accordance with section 552.1175(b), the department must withhold this information under section 552.1175. If the department does not receive the appropriate election, this information may not be withheld under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Thus, the department must withhold the information we have marked under section 552.130 of the Government Code.

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

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<sup>1</sup>The 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).

the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the personal information we have marked under section 552.1175 if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 363988

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the remaining information includes a 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. See Gov't Code § 552.147.