



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2011

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-03194

Dear Ms. Armstrong:

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# 410444 (DPD ORR No. 2010-10422).

The Dallas Police Department (the "department") received a request for all lab reports, police reports, and statements pertaining to a specified case. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under

¹Although you do not specifically claim an exception to disclosure under section 552.130, you have marked information the department seeks to withhold under that section. Accordingly, we will address section 552.130, which is a mandatory exception that may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

federal and state law. 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). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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). Upon review, we find the information we have marked in is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in the submitted documents and indicated in the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

The department also seeks to withhold certain information under section 552.101 in conjunction with common-law privacy and "special circumstances." The Third Court of Appeals has ruled, however, that the "special circumstances" exception found in past attorney general open records decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *See Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, 287 S.W.3d 390 (Tex. App.—Austin 2009, pet. granted). The court of appeals ruled that the two-part test set out in

Industrial Foundation is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.* at 394; *see also Indus. Found.*, 540 S.W.2d at 686. In this instance, the information at issue is related to witnesses. We find that this information is not highly intimate or embarrassing. Therefore, as the first element of the *Industrial Foundation* test for common-law privacy is not satisfied in this instance, we conclude that the information relating to the witnesses is not confidential under common-law privacy and may not be withheld on that basis under section 552.101 of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, the department must withhold the information we have indicated in the submitted audio recording pursuant to section 552.117(a)(2) of the Government Code.

Section 552.1175 of the Government Code provides in pertinent 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.

Id. § 552.1175(b). We have indicated in the submitted audio recording the information that may be subject to section 552.1175. If the individual at issue is currently a peace officer and elects to restrict access to this information in accordance with section 552.1175 of the Government Code, the department must withhold the information we have indicated. Otherwise, this information must be released.

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 id.* § 552.130(a)(1)-(2). Therefore, the department

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

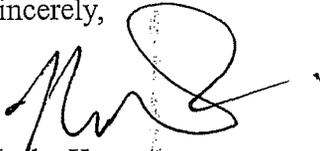
must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.⁴

In summary, the department must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (2) the information we have marked in the submitted documents and indicated in the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have indicated in the submitted audio recording under section 552.117(a)(2) of the Government Code; (4) the information we have indicated in the submitted audio recording pursuant to section 552.1175 of the Government Code; and (3) the Texas motor vehicle information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note the remaining information contains social security numbers. 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(b).

Ref: ID# 410444

Enc. Submitted documents

cc: Requestor
(w/o enclosures)