



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2011

Ms. Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2011-05094

Dear Ms. Hobbs:

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# 414358 (OCCC File# OR-11-085).

The Office of Consumer Credit Commissioner (the "commissioner") received a request for all information pertaining to the denial of a named individual's application for a pawnshop employee license. You state the commissioner has provided some of the requested information to the requestor. You claim the submitted license application file information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 exception encompasses information other statutes make confidential, such as section 14.154 of the Finance Code, which provides:

¹Although you also raise section 552.305 of the Government Code for some of the submitted information, that provision is not an exception to disclosure. Rather, section 552.305 requires a governmental body to notify third parties whose proprietary interests may be implicated by a request for information of the request and of the parties' right to submit comments to this office explaining why the requested information should be withheld from disclosure. See Gov't Code § 552.305(d).

(a) Criminal history record information received by the [commissioner] is confidential and is for the exclusive use of the [commissioner].

(b) Except on court order or as provided by Section 14.155(a), the information may not be released or otherwise disclosed to another person.

Fin. Code § 14.154; *see also* Gov't Code §§ 411.095 (authorizing commissioner to obtain from Texas Department of Public Safety criminal history record information relating to applicant for or holder of license under chapter 342, 347, 348, 351, or 371 of the Finance Code), .082(2) (defining "criminal history record information" for purposes of chapter 411, subchapter F of the Government Code). You state the information submitted as Attachments E and F, and the information you have marked in Attachment D, constitutes criminal history record information that was received by the commissioner. You also state this information, in this instance, is not subject to release under section 14.154(b). Based on your representations and our review, we conclude the information at issue is confidential under section 14.154 of the Finance Code. Accordingly, the commissioner must withhold Attachments E and F, and the information you have marked in Attachment D, under section 552.101 of the Government Code in conjunction with section 14.154 of the Finance Code.

You assert some of the remaining information in Attachment D is confidential under both common-law and constitutional privacy. Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy 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. *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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990). We have marked the named applicant's financial history information in Attachment D that is not of legitimate public concern. Therefore, the information we have marked is subject to common-law privacy.

We note, however, the requestor is an attorney who you indicate may be acting as the named applicant's authorized representative. As such, the requestor would have a special right of access to the applicant's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Thus, if the requestor is acting as the applicant's authorized representative, the information we have marked is not protected by

common-law privacy and must be released to this requestor.² If the requestor is not acting as the applicant's authorized representative, the commissioner must withhold the information we have marked in Attachment D under section 552.101 of the Government Code in conjunction with common-law privacy.³

This office has also found an individual's criminal history, when compiled by a governmental body, 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You claim the remaining information you have marked in Attachment D constitutes compiled criminal history information that is confidential under common-law privacy. You inform us, however, this information was provided by the named license applicant as part of his application. Thus, this information was not compiled by any governmental body. Furthermore, you have not provided any arguments explaining how this information is otherwise confidential under common-law privacy. Consequently, the commissioner may not withhold any of the remaining information at issue in Attachment D under section 552.101 of the Government Code in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not provided any arguments explaining how constitutional privacy applies to the criminal history information you seek to withhold in Attachment D. Thus, we find you have not demonstrated how any portion of this information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy:

²Although you also contend this information is protected under constitutional privacy, we note the requestor would have the same right of access to the information pursuant to section 552.023(b), if he is acting as the applicant's authorized representative.

³As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

Consequently, the commissioner may not withhold any of the remaining information at issue in Attachment D under section 552.101 of the Government Code in conjunction with constitutional privacy. As you have not claimed any other exceptions to disclosure for this information, it must be released.

You have marked the applicant's social security number and a number you assert is the applicant's Texas driver's license number in the remaining information. You state the commissioner will withhold the marked driver's license number under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009). *See* Open Records Decision No. 684 (authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without necessity of requesting attorney general decision). You also state the commissioner will withhold the marked social security number pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (authorizing 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).

We note, however, the number you have marked as the applicant's Texas driver's license number does not match the applicant's Texas driver's license number listed elsewhere in the submitted information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Section 552.130 does not apply to out-of-state motor vehicle record information. Thus, if the marked number is not the applicant's Texas driver's license number, the commissioner may not withhold the marked number under section 552.130 pursuant to Open Records Decision No. 684.

If, however, the number you have marked is the applicant's Texas driver's license number, we note section 552.130, as well as section 552.147, protect privacy interests. As previously noted the requestor may be acting as the applicant's authorized representative. As such, the requestor would have a right under section 552.023 of the Government Code to the applicant's driver's license number and social security number. *Id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Therefore, if the requestor is acting as the applicant's authorized representative, the commissioner may not withhold the applicant's Texas driver's license number under section 552.130 of the Government Code or the applicant's social security number under section 552.147 of the Government Code. Otherwise, the commissioner may withhold this information as planned.

In summary, the commissioner must withhold Attachments E and F, and the information you have marked in Attachment D, under section 552.101 of the Government Code in conjunction with section 14.154 of the Finance Code. If the requestor is not acting as the applicant's authorized representative, the commissioner must withhold the information we

have marked in Attachment D under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the applicant's authorized representative, the information we have marked in Attachment D must be released to this requestor. If the number you have marked is not the applicant's Texas driver's license number, the commissioner may not withhold the marked number under section 552.130 of the Government Code pursuant to Open Records Decision No. 684. If the marked number is the applicant's Texas driver's license number and if the requestor is acting as the applicant's authorized representative, the commissioner may not withhold the applicant's Texas driver's license number under section 552.130 of the Government Code. Likewise, if the requestor is acting as the applicant's authorized representative, the commissioner may not withhold the applicant's social security number under section 552.147 of the Government Code. Otherwise, the commissioner may withhold the Texas driver's license and social security numbers as planned. 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) 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eeg

Ref: ID# 414358

Enc. Submitted documents

c: Requestor
(w/o enclosures)