ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2011

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-05645

Dear Ms. Dang:

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# 415253.

The Corpus Christi Police Department (the "department") received a request for eight categories of information relating to a fatal incident involving a named individual. You state some of the requested information has been released. You contend some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. Additionally, you believe some of the information at issue may implicate the interests of Susser Holdings, L.L.C. ("Susser"). You state Susser was notified of this request for information and of its right to submit arguments to this office as to why the information should not be released.[1] *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments and reviewed the information you submitted.

You contend the submitted information you have marked is not subject to the Act because the department has custody of the information as an agent of the grand jury. We note the judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code

[1]As of the date of this decision, this office has received no correspondence from Susser.

§ 552.003(1)(B). This office has determined that for purposes of the Act, a grand jury is part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and are therefore not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Based on your representations and our review of the information at issue, we conclude the information we have marked is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of that information. We find the remaining information you have marked is not maintained by the department as an agent of the grand jury. Instead, that information is subject to the Act, and the department must release it, unless the information falls within the scope of an exception to disclosure.

You also contend some of the submitted information does not constitute public information for purposes of section 552.002 of the Government Code. The Act is applicable to "public information," which section 552.002 defines as consisting of

> information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
>
> (1) by a governmental body; or
>
> (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You contend the information at issue includes e-mail addresses and telephone numbers of members of the public that are personal in nature and not connected with the transaction of the official business of the City of Corpus Christi. We understand the remaining information at issue is related to a criminal investigation the department is conducting. Thus, we find the department collected or assembled and maintains the remaining information in connection with the transaction of the department's official business. Therefore, we find the remaining information is subject to section 552.002

of the Government Code and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002, .006, .021.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information 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 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). We note the definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the "DPS") under subchapter C of chapter 521 of the Transportation Code. *See 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* ORD 565 at 10-12; *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 id.* § 411.089(b). We note that because the laws that govern the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, a deceased individual's CHRI obtained from a 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. We also note a criminal justice agency may disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." Gov't Code § 411.081(b). We have marked CHRI the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.[2] Although you have marked additional information the department seeks to withhold on this basis, we conclude the information in question does not constitute CHRI made confidential by the federal law or subchapter F of chapter 411 of the Government Code and may not be withheld on that basis under section 552.101 of the Government Code.

You also claim section 552.101 of the Government Code in conjunction with section 414.009 of the Government Code, which provides in part:

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

> (a) A person who is a member or employee of the [crime stoppers advisory council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Id. § 414.009. You state some of the submitted information was submitted to a crime stoppers organization. *See id.* § 414.001(2)(B) (defining "crime stoppers organization" as public organization operated on a local or statewide level that pays rewards to persons who report information about criminal activity to the organization and that forwards the information to the appropriate law enforcement agency). Based on your representation, we have marked information the department must withhold under section 552.101 of the Government Code in conjunction with section 414.009 of the Government Code. As you do not indicate any of the remaining information at issue falls within the scope of section 414.009, we conclude the department may not withhold any other information on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which makes fingerprints confidential. Section 560.003 provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides "[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[.]" *Id.* § 560.002(1)(A). We have marked fingerprints the department must withhold under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You also claim section 552.101 of the Government Code in conjunction with 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. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *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). We note information relating to routine traffic violations or to an offense for which an individual is currently involved in the criminal justice system does not implicate privacy concerns. *Cf.* Gov't Code § 411.081(b).

We also have determined common-law privacy encompasses certain types of personal financial information. Financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You contend some of the remaining information is protected by common-law privacy. We note privacy is a personal right that lapses at death. *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.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Therefore, information pertaining only to a deceased individual is not protected by common-law privacy. We also note the submitted information is related to a criminal investigation. The public has a legitimate interest in knowing the general details of a crime. *See generally Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994)); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public has legitimate interest in details of crime and police efforts to combat crime in community). Thus, we find the remaining information at issue is not highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex*

parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You have marked the information the department seeks to withhold under section 552.108. You state release of the marked information would interfere with a pending criminal case. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the marked information. *See Houston Chronicle Publ'g Co. v. City of Houston, supra*, 531 S.W.2d at 186-88 (court delineates law enforcement interests present in active cases).

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the information you have marked under section 552.108(a)(1) of the Government Code.[3]

Next, we address your claims under sections 552.130 and 552.136 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state, a motor vehicle title or registration issued by an agency of this state, or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1)-(3). Because this exception protects personal privacy, section 552.130 is not applicable to Texas driver's license, motor vehicle or personal identification information that pertains only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc., supra,* 589 S.W.2d 489; Attorney General Opinions JM-229; H-917; ORD 272. The department must withhold the Texas driver's license and personal identification information we have marked under section 552.130 of the Government Code, along with the Texas motor vehicle information we have marked to the extent a living individual owns an interest in the vehicle.

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], 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 id.* § 552.136(a) (defining "access device"). The department must withhold the bank account number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls

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[3]As we are able to make this determination, we need not address your other claims for the marked information.

within the scope of section 552.137(c).[4] Gov't Code § 552.137(a)-(c). We note this exception is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address a governmental entity maintains for one of its officials or employees. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure.

In summary: (1) the information we have marked that is in the grand jury's constructive possession is not subject to the Act, and this decision does not address the public availability of that information; (2) the department must withhold 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, section 414.009 of the Government Code, and section 560.003 of the Government Code; (3) the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c); (4) the department must withhold the Texas driver's license and personal identification information we have marked under section 552.130 of the Government Code, along with the Texas motor vehicle information we have marked to the extent a living individual owns an interest in the vehicle; (5) the department must withhold the bank account number we have marked under section 552.136 of the Government Code; and (6) the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure.[5] The department must release the rest of the submitted information.[6]

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

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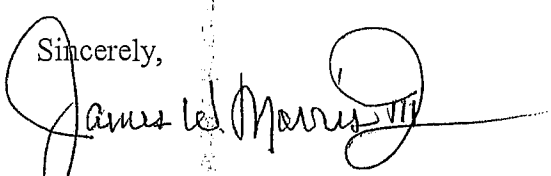
[4]This office will raise section 552.137 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

[5]We note the remaining information includes 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.

[6]We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, Texas driver's license and license plate numbers under section 552.130 of the Government Code, a bank account number under section 552.136 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 415253

Enc: Submitted information

c: Requestor
(w/o enclosures)