



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2012

Ms. Dana W. Cooley
District Attorney
132nd Judicial District
1806 25th Street, Suite 302
Snyder, Texas 79549-2530

OR2012-05360

Dear Ms. Cooley:

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# 450689.

The 132nd District Attorney’s Office (the “district attorney”) received a request for case files regarding a named individual for two specific incidents and a motion to revoke probation. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) excepts “[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(b)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A).

You state the submitted information in Exhibits D and E relates to an investigation that “*has not to date resulted in a conviction or a deferred adjudication*” (emphasis added). Thus, we understand you to represent this investigation is ongoing. However, we note section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case “that *did not result in conviction or deferred adjudication.*” *Id.* § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations, we find you have failed to demonstrate that the submitted information relates to a criminal case that has concluded in a final result. Accordingly, we find you have not demonstrated the applicability of section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A). We therefore conclude the district attorney may not withhold any of the submitted information in Exhibits D or E under section 552.108 of the Government Code.

Section 552.101 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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find portions of the submitted information, which we have marked, constitute confidential CHRI. Thus, the marked CHRI must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, no portion of the remaining information constitutes CHRI and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 560.003 of the Government Code, which governs the public availability of fingerprints.¹ 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, however, that “[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). Accordingly, we find a person, or the person’s authorized representative, has a right of access under section 560.002(1)(A) to that person’s biometric information. In this instance, the requestor is an attorney who may be representing the named individual whose information is at issue. Therefore, if the requestor is the authorized representative of the named individual, the district attorney must release the marked fingerprint to the requestor. If the requestor is not the authorized representative of the named individual, the district attorney must withhold the marked fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found 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) (personal financial information includes choice of particular insurance carrier), 545 (1990), 523 (1989). Upon review, we find the personal financial information we have marked in Exhibits D and G is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district attorney must generally withhold the information we have marked in Exhibits D and G under section 552.101 in conjunction with common-law privacy. As noted above, the requestor is an attorney who may be representing the named individual whose information is at issue. As such, the requestor may have a right of access under section 552.023 of the Government Code to the marked information that would otherwise be withheld to protect the individual’s privacy. *See 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is the authorized representative of the

¹The 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).

named individual, then the district attorney must release the marked personal financial information to the requestor.

Next, you seek to withhold motor vehicle record information in Exhibit F relating to the named individual under section 552.130 of the Government Code. We also note portions of the submitted information in Exhibits D, E, and G contain motor vehicle record information subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Therefore, we agree the district attorney must generally withhold the motor vehicle record information you have marked in Exhibit F, as well as the additional information we have marked in Exhibits D, F, and G and the information we have indicated on the submitted DVD in Exhibit E.

We note Exhibit F contains a partial credit card number belonging to the named individual and Exhibit G contains the insurance policy number of the named individual. Section 552.136 of the Government Code provides "[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." Gov't Code § 552.136(b). This office has concluded that partial credit card numbers and insurance policy numbers constitute access device numbers for purposes of section 552.136. Therefore, the district attorney must generally withhold the partial credit card number we have marked in Exhibit F and the insurance policy number we have marked in Exhibit G under section 552.136 of the Government Code.

However, we note sections 552.130 and 552.136 of the Government Code protect personal privacy. As noted above, the requestor is an attorney who may be representing the named individual whose information is at issue. As such, the requestor may have a right of access under section 552.023 of the Government Code to the marked information that would otherwise be withheld to protect the individual's privacy. *See id.* § 552.023(a). Therefore, if the requestor is the authorized representative of the named individual, then the district attorney must release the marked motor vehicle record information and access device numbers to this requestor.

In summary, if the requestor is not the authorized representative of the named individual whose information is at issue, the district attorney must withhold (1) the marked CHRI under section 552.101 in conjunction with section 411.083 of the Government Code, (2) the marked fingerprint in Exhibit F under section 560.003 of the Government Code, (3) the marked personal financial information in Exhibits D and G under section 552.101 of the Government Code in conjunction with common-law privacy, (4) the marked motor vehicle record information in Exhibits D, F and G and the information we have indicated in Exhibit E under section 552.130 of the Government Code, and (5) the marked partial credit card number in Exhibit F and the marked insurance policy number in Exhibit G under

section 552.136 of the Government Code. If the requestor is the authorized representative of the named individual, he has a right of access to the marked fingerprint, personal financial information, motor vehicle record information, partial credit card number, and insurance policy number in Exhibits D, E, F, and G. The remaining information must be released.²

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/sdk

Ref: ID# 450689

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains the social security of the named individual. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). As noted above, the requestor is an attorney who may be representing the named individual whose information is at issue. Because section 552.147 protects personal privacy, the requestor may have a right of access to the named individual's social security number as his authorized representative under section 552.023 of the Government Code. *See id.* § 552.023(a). Therefore, if the requestor is the named individual's authorized representative, then the named individual's social security number must be released to the requestor. If the requestor is not the named individual's authorized representative, the social security number may be withheld under section 552.147(b).