



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2012

Ms. Lisa D. Mares
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2012-06385

Dear Ms. Mares:

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# 452434.

The Weatherford Police Department (the "department"), which you represent, received a request for information pertaining to a named individual during a specified time period. You state the department has released some information to the requestor. You also state the department will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ Further, you state the department will redact information pursuant to section 552.130(c) of the Government Code.² You claim 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.³

¹ Section 552.147(b) 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).

² The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

³ We understand the submitted information is a representative sample. We 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 those records contain substantially different types of information than those submitted to this office.

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. Section 552.101 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual’s criminal history 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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note information related to routine traffic violations does not implicate privacy concerns. *Cf. Gov’t Code § 411.081(b)*. Furthermore, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis.

The present request requires the department to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual’s right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant or relates to routine traffic offenses. This information does not implicate the privacy interests of the named individual and may not be withheld as criminal history information on the basis of common-law privacy. Accordingly, we will consider whether any of this information is excepted under the Act.

Section 552.101 of the Government Code also 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. 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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See Open Records Decision No. 565* (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information in accordance with 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B). Upon review, we find the department must withhold the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit C relates to closed cases that concluded in final results other than conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to Exhibit C.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the information we have marked under section 552.130.⁴

In summary, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked

⁴We note Open Records Decision No. 684 (2009) is a previous determination permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. However, we note any other information made confidential by section 552.130(a)(2), such as vehicle identification numbers, is not subject to section 552.130(c), which only applies to information made confidential by subsections 552.130(a)(1) and 552.130(a)(3), or Open Records Decision No. 684 and, therefore, may not be withheld without requesting a decision from this office.

under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. Except for basic information, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the license plate number we have marked under section 552.130 of the Government Code. 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 452434

Enc. Submitted documents

c: Requestor
(w/o enclosures)