



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

Mr. Mack T. Harrison
Assistant District Attorney
Caldwell County
P.O. Box 869
Lockhart, Texas 78644

OR2012-06824

Dear Mr. Harrison:

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# 453082.

The Caldwell County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to case number 2012010049. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions 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 section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *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. Similarly, 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 one'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. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes CHRI. Thus, the sheriff's office must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

We note the remaining information includes sexual offender registration information. Section 552.101 of the Government Code also encompasses article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information to the DPS sex offender registration database: the person's full name; each alias used by the person and any home, work, or cellular telephone number of the person; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, any home, work, or cellular telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b).

As you acknowledge, the remaining information contains fingerprints. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from

disclosure under [the Act].” Gov’t Code § 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). We note the requestor in this instance is a representative of the insurance company that represents the person whose fingerprints are at issue, and thus may have a right of access to her insured’s fingerprints. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is acting as the individual’s authorized representative, the sheriff’s office must release the fingerprints, which we have marked, to this requestor pursuant to section 560.002. If the requestor is not acting as the individual’s authorized representative, the sheriff’s office must withhold the marked fingerprints under section 552.101 in conjunction with section 560.003.¹

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a).

Section 552.101 of the Government Code also encompasses the common-law right to privacy, which 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 met. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body ordinarily satisfies the first element of the common-law privacy test. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found information regarding receipt of governmental funds or debts owed to governmental entities is not excepted from public disclosure by common-law privacy), 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). Whether the public’s interest in obtaining personal

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

financial information is sufficient to justify its disclosure must be made on case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983). We find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. The marked information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note that while some of the remaining information may be highly intimate or embarrassing, there is legitimate public interest in the details of a crime. *See* Open Records Decision No. 400 at 4 (1983); *see generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Therefore, none of the remaining information is private, and it may not be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to (1) a motor vehicle operator’s or driver’s license or permit, (2) a motor vehicle title or registration, and (3) a personal identification document, issued by an agency of this state or another state or country. Gov’t Code § 552.130(a). The remaining information, including the video recording labeled DI-2478, contains information subject to section 552.130. However, you state the sheriff’s office does not have the capacity to redact information from the video recording. Therefore, CD number DI-2478 in its entirety and the information we have marked in the remaining information are generally confidential under section 552.130(a).

We note a portion of the remaining information is protected by section 552.136 of the Government Code.² Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining “access device number”). This office has determined an insurance policy number is an access device for purposes of section 552.136. The insurance policy number we have marked is generally confidential under section 552.136 of the Government Code.

You state you will redact social security numbers as permitted by section 552.147(b) of the Government Code. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). 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. *Id.* § 552.147(b). Therefore, the sheriff’s office may generally withhold the social security numbers in the submitted information under section 552.147(a).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

However, we note common-law privacy and sections 552.130, 552.136, and 552.147 protect personal privacy. As noted above, the requestor may be acting as the authorized representative of the individual whose privacy interests are at issue. In that event, the requestor would have a right of access under section 552.023 of the Government Code to her insured's information. *See id.* § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); ORD 481 at 4. Accordingly, if the requestor is acting as the individual's authorized representative, the sheriff's office may not withhold from this requestor information that would otherwise be withheld under common-law privacy or section 552.130, 552.136, or 552.147 to protect this individual's privacy. However, if the requestor is not acting as the individual's authorized representative, the sheriff's office must withhold the information pertaining to this individual we have marked under common-law privacy and sections 552.130 and 552.136, and may withhold the individual's social security number under section 552.147. In either event, the sheriff's office must withhold the information pertaining to the other individual we marked under section 552.130 and may withhold her social security number under section 552.147.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b). The sheriff's office must withhold the information we marked under section 552.102 of the Government Code. If the requestor is not acting as the individual's authorized representative, the sheriff's office (1) must withhold the marked fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code, (2) must withhold the information pertaining to the individual that we have marked under section 552.101 in conjunction with common-law privacy and under sections 552.130 and 552.136 of the Government Code, and (3) may withhold the individual's social security number under section 552.147 of the Government Code. The sheriff's office must withhold the information pertaining to the other individual we have marked under section 552.130 and may withhold the other individual's social security number under section 552.147. 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,

A handwritten signature in black ink that reads "Misty Haberer Barham". The signature is written in a cursive, flowing style.

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 453082

Enc. Submitted documents

c: Requestor
(w/o enclosures)