



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2012

Ms. Laura Ingram  
Assistant District Attorney  
Wichita County  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2012-12872

Dear Ms. Ingram:

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# 462320.

The Wichita County District Attorney's Office and the Wichita County Sheriff's Office (collectively, the "county") each received a request for all criminal records pertaining to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes documents filed with a court. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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<sup>1</sup>Although you raise section 552.103 of the Government Code for work product of the prosecuting attorney, the proper exception for the substance of your arguments is section 552.111. See Open Records Decision No. 677 (2002).

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Pursuant to section 552.022(a)(17), a document that has been filed with a court is expressly public and may not be withheld unless it is confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.108 of the Government Code for the submitted court documents, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information confidential for purposes of section 552.022(a)(17), and the county may not withhold the information at issue under section 552.108. You also raise section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the county may not withhold the court filed documents on the basis of common-law privacy under section 552.101. However, because sections 552.101 and 552.130 make information confidential under the Act, we will consider the applicability of these exceptions to the court filed documents, as well as your arguments for the remaining information at issue.

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 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, 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. Although you seek to withhold a "SID" or "State ID Number" in the one of the documents subject to section 552.022(a)(17), upon review, we find you have not explained how this number constitutes CHRI for the purposes of chapter 411 or federal law. Therefore, the

county may not withhold the “SID” or “State ID Number” under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See id.* §§ 560.001 (defining “biometric identifier” to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the county must withhold the fingerprint information it has marked in the documents subject to section 552.022(a)(17) under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1). Upon review, we find the county must withhold the information you have marked in the documents subject to section 552.022(a)(17) under section 552.130 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law 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 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) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks for all criminal records concerning the named individual. These requests require the county to compile unspecified law enforcement records concerning the named individual, thus implicating the named individual’s right to privacy. Therefore, with the exception of the court filed documents, to the extent the county maintains any law enforcement records depicting this individual as a suspect, arrestee, or criminal defendant, the county must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the court filed documents we have marked, to the extent the county maintains any information that lists the named individual as a suspect, arrestee,

or criminal defendant, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the information it has marked in the court filed documents under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and section 552.130 of the Government Code. The remainder of the court filed documents 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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

Ref: ID# 462320

Enc. Submitted documents

c: Requestor  
(w/o enclosures)