



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2013

Ms. Laura Garza Jimenez
Nueces County Attorney
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2013-01384

Dear Ms. Jimenez:

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# 477664.

The Nueces County Sheriff's Office (the "sheriff's office") received a request for information related to a specified arrest of a named individual. You indicate the sheriff's office will withhold fingerprints and a Texas license plate number pursuant to previous determinations issued in Open Records Decision No. 684 (2009) and a social security number pursuant to section 552.147 of the Government Code.¹ You claim some of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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 exception encompasses information made confidential by other statutes. Criminal history record information ("CHRI") obtained from the National Crime

¹Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting a decision under the Act, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and a Texas license plate number under section 552.130 of the Government Code. See ORD 684 at 14-15. Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision. See Gov't Code § 552.147(b).

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 statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). 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.” *Id.* § 411.081(b). 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 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 have marked CHRI the sheriff’s office 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. Although you seek to withhold other information on this basis, we conclude the remaining information at issue does not fall within the scope of the federal or state law applicable to CHRI and may not be withheld under section 552.101.

Section 552.101 of the Government Code also encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two types of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). In Open Records Decision No. 430 (1985), this office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, which would be threatened if their

names were released. *See also* Open Records Decision Nos. 428 (1985) (logs of certain mail sent or received by inmates protected by constitutional privacy), 185 (1978) (public's right to obtain inmate's correspondence list not sufficient to overcome First Amendment right of inmate's correspondents to maintain communication with inmate free of threat of public exposure). We conclude the sheriff's office must withhold the information related to an inmate's correspondents we have marked under section 552.101 of the Government Code in conjunction with constitutional privacy.

Common-law privacy under section 552.101 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 id.* 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 also 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 conclude the medical and other personal information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the sheriff's office must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. Although you seek to withhold additional information on this basis, you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, the sheriff's office may not withhold any of the remaining information on privacy grounds under section 552.101.²

Lastly, section 552.130 of the Government Code excepts from disclosure information related to a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue a personal identification document.³ Gov't Code § 552.130(a)(3). We have marked personal identification information the sheriff's office must withhold under section 552.130.⁴

²We note 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).

³This office will raise section 552.130 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).

⁴Although you have marked the personal identification information to be withheld under Open Records Decision No. 684, we note the previous determinations issued in that decision do not encompass personal identification information protected by section 552.130 of the Government Code.

In summary, the sheriff's office must withhold (1) the CHRI 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; (2) the information related to the inmate's correspondents we have marked under section 552.101 in conjunction with constitutional privacy; (3) the medical and other personal information we have marked under section 552.101 in conjunction with common-law privacy; and (4) the personal identification information we have marked under section 552.130 of the Government Code. The rest of the submitted 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,

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

JWM/bhf

Ref: ID# 477664

Enc: Submitted documents

c: Requestor
(w/o enclosures)