



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2013

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2013-03608

Dear Mr. Weir:

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# 480323 (COSA file No. W012180).

The San Antonio Police Department (the "department") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. Section 552.101 encompasses the doctrine of common-law 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. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it

is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, the information may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we agree some of the submitted information, which we have marked, is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note the remaining information includes information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Upon review, we find the department must generally withhold the information we have marked under section 552.130 of the Government Code.

We note the requestor appears to be seeking access to the submitted information on behalf of the San Antonio Housing Authority (the "housing authority"). The Texas Department of Public Safety (the "DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency that is authorized to receive CHRI pursuant to a federal statute, executive order or state statute. *See* Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. *See* ORD 655 at 4. The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of title 42 of the United States Code provides that "the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency]." Gov't Code § 411.087(a)(2). Thus, a housing authority is also authorized to obtain CHRI from a local criminal justice agency such as the department. *See* ORD 655 at 4; *see also* Gov't Code §§ 411.083(b)(2), .087(a). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and

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<sup>1</sup>The 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).

notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). However, the purposes for which a housing authority may request CHRI are limited by federal law, which provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A).

Although the requestor appears to be acting on behalf of the housing authority, in this instance, the information withheld does not constitute or contain any CHRI. Therefore, the department is not required to release any of the information at issue under section 1437d(q)(1)(A) of title 42 of the United States Code. Instead, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and section 552.130. As you raise no further exception to disclosure, the remaining information must be released.<sup>2</sup>

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/dls

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<sup>2</sup>We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov’t Code § 552.147(b).

Ref: ID# 480323

Enc. Submitted documents

c: Requestor  
(w/o enclosures)