



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2013

Ms. Charlotte Kim
Assistant Criminal District Attorney
County of Waller
645 12th Street
Hempstead, Texas 77445

OR2013-20439

Dear Ms. Kim:

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# 506621.

The Waller County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for all information regarding a specified motor vehicle accident, including 1) information pertaining to witnesses, 2) witness statements, 3) investigative reports, 4) interdepartmental memoranda, 5) electronic communications sent by a police officer, the district attorney's office, or an investigator, 6) list of all evidence, and 7) copies of any similar open records requests. You indicate you do not have any information responsive to some of the specified categories of the request. You also inform us you have released some of the requested information to the requestor. You claim some of 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 "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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we note, information relating to routine traffic violations does not implicate privacy concerns. *Cf. Gov't Code* § 411.081(b). You state the present request requires the district attorney's office to compile unspecified law enforcement records concerning an individual and, thus, implicates this individual's right to privacy. However, we note the requestor is seeking information regarding a specified incident. Accordingly, the request does not implicate any individual's right to privacy, and the submitted information may not be withheld on this basis.

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." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Open Records Decision No. 565 at 7* (1990). 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). 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. We note CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked consists of confidential CHRI. The district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the

Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Further, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. See generally Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.101 of the Government Code in conjunction with sections 521.045 and 521.0475 of the Transportation Code for the driving records in Exhibit E.¹ Section 521.045 provides:

On receipt of a written request and payment of a \$4 fee, the [Texas Department of Public Safety (the "department")] may disclose information relating to an individual's date of birth, current license status, and most recent address, as shown in the department's records, to a person who:

- (1) is eligible to receive the information under Chapter 730; and
- (2) submits to the department the individual's driver's license number or the individual's full name and date of birth.

Transp. Code § 521.045. Section 521.0475 of the Transportation Code provides in relevant part that "the department shall provide a certified abstract of a complete driving record of a license holder, for a fee of \$20, to the license holder or a person eligible to receive the information under Sections 730.007(a)(2)(A), (D), and (I)." *Id.* § 521.0475(a). Thus, sections 521.045 and 521.0475 specifically regulate the disclosure of information by the department. Therefore, because the information at issue is maintained by the district attorney's office, and not the department, sections 521.045 and 521.0475 are not applicable

¹Although you cite to section 541.045 of the Transportation Code in your brief to this office, because no such section exists, we understand you to mean section 521.045 of the Transportation Code. Additionally, although you cite to section 601.022 of the Transportation Code in your brief to this office, we understand you to mean section 521.0475 of the Transportation Code. See Act of June 1, 2003, 75th Leg., R.S., S.B. 1904, §§ 2, 14(3).

in this instance. Accordingly, none of the information at issue may be withheld on these bases.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130(a). We note we have marked motor vehicle record information of a vehicle belonging to a deceased individual. The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Accordingly, if a living person owns an interest in the deceased individual's vehicle, the district attorney's office must withhold the motor vehicle record information pertaining to that vehicle under section 552.130 of the Government Code. If no living person owns an interest in the deceased individual's vehicle, the district attorney's office may not withhold the motor vehicle record information pertaining to that vehicle under section 552.130. In either case, the district attorney's office must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code.³

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], 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.” Gov't Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Therefore, the district attorney's office must withhold the insurance policy number we have marked under section 552.136 of the Government Code.⁴

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

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *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).

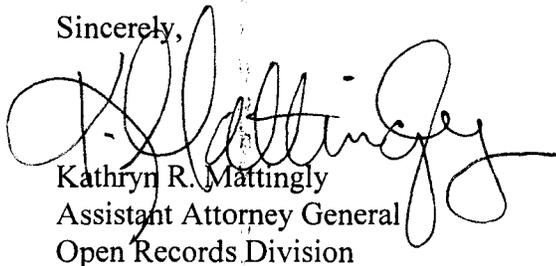
⁴Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

In summary, the district attorney's office must withhold the confidential CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; however, the district attorney's office must release the motor vehicle record information pertaining to the deceased individual's vehicle if no living person owns an interest in that vehicle. The district attorney's office must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The district attorney's office must release the remaining information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/som

Ref: ID# 506621

Enc. Submitted documents

c: Requestor
(w/o enclosures)