



February 4, 2015

Ms. Susan Fillion  
Assistant County Attorney  
Harris County Sheriff's Office  
1200 Baker Street, Second Floor  
Houston, Texas 77002

OR2015-02263

Dear Ms. Fillion:

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# 552505 (HCSO File No. 14SO400109).

The Harris County Sheriff's Office (the "sheriff's office") received a request for all information in the sheriff's office's possession pertaining to two named individuals and a named bail bonding company, including information related to the original applications for bail bond licensure, all complaints and inquiries, all renewal applications, and available collateral.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.147 of

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<sup>1</sup>We note the sheriff's office sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the sheriff's office received the required deposit on November 10, 2014. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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, including section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as follows:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the information we have marked constitutes tax return information that is confidential under section 6103(a). Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>4</sup> However, we find you have failed to demonstrate any portion of the remaining information is subject to section 6103(a) of title 26 of the United States Code. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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<sup>2</sup>Although you also raise section 552.108 of the Government Code, you have not provided any arguments to support this exception. Therefore, we do not address section 552.108. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

<sup>3</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses the federal Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (c). The DPPA defines "motor vehicle record," in relevant part, as "any record that pertains to a motor vehicle operator's permit . . . issued by a department of motor vehicles[.]" *Id.* § 2725(1). Section 2725 also defines personal information as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." *See id.* § 2725(3). You state the submitted information contains personal information that was obtained from the Texas Department of Public Safety ("DPS") and is protected under the DPPA. We note this office has concluded that the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). Further, we understand

the sheriff's office obtained the personal information for use in carrying out its functions with regard to bail bond licensure. Based upon your representations and our review, we conclude some of the submitted information, which we have marked, was obtained from DPS by an authorized recipient; therefore, this information is confidential under section 2721 of title 18 of the United States Code. Accordingly, as we have no indication that release of this information would be for a use permitted under section 2721(b), we conclude the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. *See* 18 U.S.C. § 2721(a)(1). However, you have failed to demonstrate how any of the remaining information is subject to section 2721(a). Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). 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 (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 that the Department of Public Safety ("DPS") maintains, except that 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. Thus, 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 marked consists of CHRI the sheriff's office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>5</sup> However, we find you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff's office may not withhold it under section 552.101 on that basis.

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Upon review, we find the sheriff’s office must withhold the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, whether financial information is of legitimate public interest, and therefore not protected by common-law privacy, must be determined on a case-by-case basis.

Portions of the remaining information, including financial information, were provided to the sheriff’s office by individuals for the purpose of obtaining approval of bail bond licenses. Because this information was used by the sheriff’s office to assess the status of bail bond licensure, we find there is a legitimate public interest in this information. *See* ORD 600 (legitimate public interest exists in facts about a financial transaction between individual and governmental body). However, upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>6</sup> However, we find you have not demonstrated the remaining information is highly intimate or embarrassing and of no legitimate public concern; thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code exempts 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 held section 552.102(a) exempts 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). Thus, under the *Texas Comptroller* decision, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by the employer in an employment context. We find the information you have marked under section 552.102 is not held by the sheriff's office in an employment context. Therefore, we conclude the information you marked is not subject to section 552.102(a) of the Government Code, and the sheriff's office may not withhold it on that basis.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 only applies to information held by a governmental body in an employment context. Thus, information that is not held in an employment context may not be withheld under section 552.117(a)(1). As concluded above, we find the remaining information is not held by the sheriff's office in an employment context. Accordingly, the sheriff's office may not withhold the information you have marked under section 552.117(a)(1) of the Government Code.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Upon review, we find you have not demonstrated how any portion of the remaining information pertains to the types of individuals to whom section 552.1175 applies. As such, the sheriff's office may not withhold any of the remaining information on this basis.

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find the remaining information does not consist of motor vehicle record information subject to section 552.130, and the sheriff's office may not withhold it on that basis.

Section 552.136 of the Government Code provides, "[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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the sheriff's office must withhold the account, routing, and insurance policy numbers we have marked under section 552.136 of the Government Code. However, we find you have not demonstrated the remaining information is subject to section 552.136 of the Government Code, and the sheriff's office may not withhold it on that basis.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses at issue are not among the types specifically excluded by section 552.137(c). Accordingly, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137, unless the owners affirmatively consent to release of their e-mail addresses.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the sheriff's office may withhold the submitted social security numbers under section 552.147 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of

the United States Code, section 2721(a) of title 18 of the United States Code, and section 411.083 of the Government Code. The sheriff's office must withhold the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.136 of the Government Code. The sheriff's office must withhold the e-mail addresses we have marked under section 552.137, unless the owners affirmatively consent to release of their e-mail addresses. The sheriff's office may withhold the submitted social security numbers under section 552.147 of the Government Code. The sheriff's office must release the remaining information.

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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/akg

Ref: ID# 552505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)