



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 3, 2017

Mr. Carlos G. Madrid  
Assistant County Attorney  
El Paso County  
500 East San Antonio Room 503  
El Paso, Texas 79901

OR2017-06877

Dear Mr. Madrid:

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# 651761 (File No. 0082-17-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for all booking records, appearances, warrants, commitment order, processing documents, tickets, fines, capias pro fine warrants, and complaints concerning a named individual. You state the sheriff's office has released some documents to the requestor. 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 of the Government Code 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 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 or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083(a).

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). We

note section 411.083 does not apply to active warrant information or other information relating to one's current involvement in 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). We further note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find the information we marked constitutes confidential CHRI. Thus, the marked information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.<sup>1</sup> However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

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. We find the identity of a victim of alleged child abuse or neglect is private. *Cf.* Family Code § 261.201. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Upon review, we find the sheriff's office must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the requestor has a right of access to some of the information at issue under section 552.023 of the Government Code that would otherwise be confidential under common-law privacy. *See Gov't Code* § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the sheriff's office may not withhold the named individual's private information from his authorized representative, the requestor, under section 552.101 on that basis. Additionally, the sheriff's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

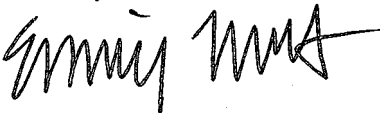
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> See Gov't Code § 552.130. We note section 552.130 protects personal privacy. As noted above, the requestor has to right of access to the named individual's motor vehicle record information under section 552.023 of the Government Code, and the sheriff's office may not withhold it under section 552.130. See *id.* § 552.023; ORD 481 at 4. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must withhold the marked information 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 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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/nmd

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<sup>2</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. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 651761

Enc. Submitted documents

c: Requestor  
(w/o enclosures)