



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2017

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

OR2017-21389

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# 676302 (0304-17-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for four categories of information pertaining to biometric technologies.¹ You state you have released most of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this

¹We note the sheriff's office did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, because third party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third party interests. *See id.* §§ 552.001, .302, .352. The 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). Sections 552.101 and 552.130 of the Government Code are mandatory exceptions that make information confidential and can provide compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the applicability of these sections to the submitted information.

information may implicate the proprietary interests of SVP Global Business Development. Accordingly, you state, and provide documentation demonstrating, you notified the third party of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the sheriff's office may not withhold the submitted information on the basis of any proprietary interest the third party may have in the 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."² Gov't Code § 552.101. Section 552.101 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 id.* § 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 E-1 or 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.

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).

Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. The submitted information contains FBI numbers. However, we are unable to determine whether the FBI numbers in the submitted information constitute actual FBI numbers for the purposes of section 411.083, or whether they are fictitious FBI numbers created as part of a bid proposal. Therefore, we rule conditionally. To the extent the submitted FBI numbers constitute actual FBI numbers for the purposes of section 411.083, the sheriff’s office must withhold them under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. To the extent the submitted FBI numbers constitute fictitious FBI numbers, the sheriff’s office may not withhold them on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). The submitted information contains dates of birth of public citizens. However, as noted above, we are unable to determine whether the dates of birth in the submitted information constitute actual dates of birth, or whether they are fictitious dates of birth created as part of a bid proposal. Therefore, we rule conditionally. To the extent the submitted dates of birth are actual dates of birth of public citizens, the sheriff’s office must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the submitted dates of birth constitute fictitious dates of birth, the sheriff’s office may not withhold the submitted dates of birth on that ground.

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. *See* Gov’t Code § 552.130. The submitted information contains motor vehicle record information. However, as noted above, we are unable to determine whether the motor vehicle information in the submitted information constitutes actual motor vehicle record information for purposes of section 552.130, or whether it is fictitious motor vehicle record information created as part of a bid proposal. Therefore, we rule conditionally. To the extent the submitted motor vehicle information constitutes actual motor vehicle record information, the sheriff’s office must withhold it under section 552.130 of the Government Code. To the extent the submitted motor vehicle information consists of fictitious motor vehicle record information, then the sheriff’s office may not withhold it on that ground.

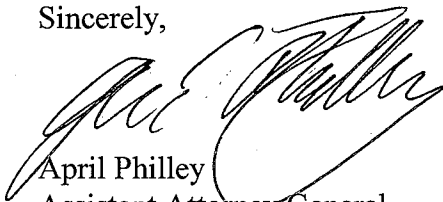
We note some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. The sheriff's office must release the remaining information in accordance with copyright law.

In summary, to the extent the information at issue is not fictitious, the sheriff's office must withhold: (1) FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) motor vehicle record information under section 552.130 of the Government Code. The sheriff's office must release the remaining information in accordance with copyright law.³

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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

³The information being released may contain social security numbers. 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 a decision from this office under the Act.

Ref: ID# 676302

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)