



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 11, 2002

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2002-7064

Dear Mr. Robert R. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172777.

The City of Longview (the "city") received two requests for information pertaining to the Palace Inn Motel. We note that a portion of the submitted information was created after these requests for information were received. Because this information is not subject to the instant request, we do not address it in this ruling. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Portions of the requested information pertain to investigations of alleged child abuse or neglect. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which provides:

---

<sup>1</sup>We assume that the 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 that those records contain substantially different types of information than that submitted to this office.

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We have reviewed the information you assert is confidential under section 261.201 and agree that it consists of files, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code or in providing services as a result of such an investigation. You have not indicated that the Longview Police Department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information that we have marked is confidential under section 261.201 of the Family Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You also contend that certain "CIF" numbers you have marked constitute criminal history record information ("CHRI"), which is confidential and not subject to disclosure. There are two types of CHRI that are confidential. The first occurs where an individual's criminal history information has been compiled by a governmental entity. Such compiled information takes on a character that implicates the individual's right to privacy and is considered confidential. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

The second type of confidential CHRI is statutory in nature. The federal and state governments maintain databases containing information about individuals who are involved in the criminal justice system. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be

limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 1901 of Title 5 of the United States Code provides:

The term “criminal history record information” means information *collected by* criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

5 U.S.C. § 1901(a)(2) (emphasis added).

In Texas, the Department of Public Safety (“DPS”) is responsible for creating and maintaining the state’s CHRI system. *See* Code Crim. Proc. art. 60.02. Section 411.083 of the Government Code provides that CHRI maintained by DPS is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). However, section 411.081 provides that statutory restrictions on the release of CHRI “do[] not prohibit a criminal justice agency from disclosing to the public criminal history record information that is related to the offense for which a person is involved in the criminal justice system.” The Government Code provides:

“Criminal history record information” 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. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

Gov't Code § 411.082(2) (emphasis added).

You inform us that the "CII" number at issue here is in fact the "state identification number" or "SID" and that this number is assigned by DPS for purposes of maintaining its CHRI database. You assert that because the CII/SID constitutes identification information that indicates the involvement of a person in the criminal justice system, section 411.082 implicitly makes such information confidential. Under both federal and state law CHRI includes only information that is collected by a criminal justice agency. According to the information you have provided, the CII/SID is *created by*, rather than collected by, a criminal justice agency and does not exist independently, unlike fingerprints and other identifying information. We therefore conclude that the CII/SID number does not fit the statutory definition of CHRI and is not made confidential by the laws governing such information. *See, e.g.*, Open Records Decision No. 658 at 4 (1998); *see also* Open Records Decision No 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Furthermore, because responding to the present request does not require the city to compile any individual's criminal history, we conclude that the common law privacy concerns expressed in *Reporters Committee* do not make the number confidential in this instance. We therefore conclude that a CII or SID is not confidential under statutory or common law and it may not be withheld on this basis.

You have also marked certain telephone numbers and addresses that you assert are confidential under chapter 772 of the Health and Safety Code. This chapter, which is also encompassed by section 552.101, authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You contend that certain addresses and telephone numbers contained in the submitted information are confidential under chapter 772. To the extent the

addresses and telephone numbers you have marked are originating addresses and telephone numbers of 9-1-1 callers and were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if these telephone numbers and addresses do not reflect the origin of 9-1-1 calls or were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, the addresses and telephone numbers must be released

You also contend that certain information constitutes emergency medical service (“EMS”) records. Section 773.091 of the Health and Safety Code provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g).

You have submitted EMS records for our review as well as a “list of EMS incidents.” The list of incidents does not constitute a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel and is not made confidential under section 773.092. The records themselves are made confidential by this section, and none of the exceptions to confidentiality appear to apply in this instance. Accordingly, EMS records must be withheld under section 552.101 of the Government Code. However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving emergency medical services are not confidential under section 773.091 and must be released from such records.

You also contend that a portion of the submitted information is protected under common law privacy principles. Common law privacy, which is also encompassed by section 552.101 of the Government Code, 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. *Id.* at 683. We have reviewed the submitted information and marked those portions that are protected by common law privacy principles and must be withheld under section 552.101.<sup>2</sup> However, other information you have marked is not protected by common law privacy and may not be withheld on that basis. *See, e.g.*, Open Records Decision No. 408 at 10 (1984) (public has legitimate interest in information about individuals who are charged with crime); *see also* Open Records Decision No. 611 at 1 (1992) (“An assault by one family member on another is a crime, not a family matter normally considered private.”).

You have also marked motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked motor vehicle record information that must be withheld under section 552.130.

Finally, you have marked certain bank account numbers. Section 552.136 of the Government Code provides in part:

---

<sup>2</sup>You also contend that bank account numbers are excepted under common law privacy. However, as the legislature has enacted section 552.136 specifically to address such information, we will consider it in the context of that exception.

(a) In this section, "access device" means 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:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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. We have marked the bank account numbers that the city must withhold pursuant to section 552.136.

In summary, information concerning investigations of alleged child abuse or neglect is confidential pursuant to section 261.201 and must be withheld under section 552.101 of the Government Code. The telephone numbers and addresses of 9-1-1 callers must be withheld under section 552.101 to the extent they were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. EMS records must be withheld except for information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of patients who received emergency medical services. We have marked information that is protected by the common law right of privacy and must be withheld under section 552.101. The city must also withhold the marked motor vehicle record information under section 552.130 and bank accounts under section 552.136. All other information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

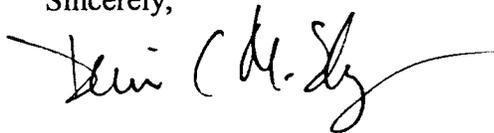
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

Mr. Robert R. Ray - Page 9

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", with a long horizontal flourish extending to the right.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 172777

Enc. Submitted documents

c: Mr. Tom Mosele  
Franklin, Mosele & Walker, P.C.  
4200 Westheimer, Suite 130  
Houston, Texas 77027  
(w/o enclosures)