



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2006

Mr. Denis C. McElroy
Assistant City Attorney
Office of the City Attorney
City of Forth Worth
1000 Throckmorton St.
Fort Worth, Texas 76102

OR2006-14943

Dear Mr. McElroy:

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#267417.

The City of Forth Worth (the "city") received a request for the entire investigation file regarding a particular investigation. You state that most of the responsive information will be released to the requestor. You have redacted social security numbers from the remaining information pursuant to section 552.147 of the Government Code.¹ Additionally, you claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information submitted by the city includes Texas motor vehicle record information. In Open Records Letter No. 2006-14726 (2006), we issued a previous determination that authorizes the city to withhold (1) a Texas driver's license number; (2) a Texas-issued state identification number; (3) a Texas license plate number; and (4) a Texas license year of a motor vehicle under section 552.130 of the Government Code without the

¹We note that 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.

necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). Thus, the city must withhold the Texas motor vehicle record information it has marked in accordance with Open Records Letter No. 2006-14726.

We now address your arguments for the information not encompassed by the previous determination. 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. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under chapter 411 of the Government Code. 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 law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the 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) 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 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. After reviewing the submitted information, we agree that the marked information is CHRI that is excepted from required public disclosure by section 552.101 of the Government Code. The city must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Based on your arguments and our review, we find that

the marked information is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states that “[n]otwithstanding 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. Accordingly, we agree that the city must withhold the marked insurance policy number pursuant to section 552.136 of the Government Code.

In summary, the city must withhold the marked information under section 552.130 of the Government Code in accordance with the previous determination issued in Open Records Letter No. 2006-14726 (2006). The city must withhold the information it has marked under chapter 411 of the Government Code in conjunction with section 552.101 of the Government Code. The city must withhold the information it has marked pursuant to section 552.101 in conjunction with common-law privacy. Finally, the city must withhold the marked information pursuant to section 552.136 of the Government Code.² The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 Dep't of Pub. 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 Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 267417

Enc. Submitted documents

c: Reese Dunklin
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