



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-02734

Dear Ms. Byles:

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# 336577 (City Request No. 1093-09).

The City of Fort Worth (the "city") received a request for a specific police report. We note you have redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code.¹ *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 the doctrine of common-law privacy, which protects information from disclosure when (1) it is highly intimate or embarrassing, such that

¹ Section 552.147(b) of the Government Code authorizes a government 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.

its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

In this instance, the city informs us the information it has marked identifies undercover officers, the release of which would likely cause the officers to face imminent threat of physical danger. Based on the city's representations and our review, we agree that the city must withhold the information it has marked, except for the information we have marked for release, under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy. However, we find that you have failed to demonstrate that release of the information we have marked for release would cause an imminent threat of physical danger to the undercover officers. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy based on "special circumstances."

We note the submitted information contains criminal history record information. Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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 the 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. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the remaining information constitutes CHRI. Therefore, the city must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.137 of the Government Code 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

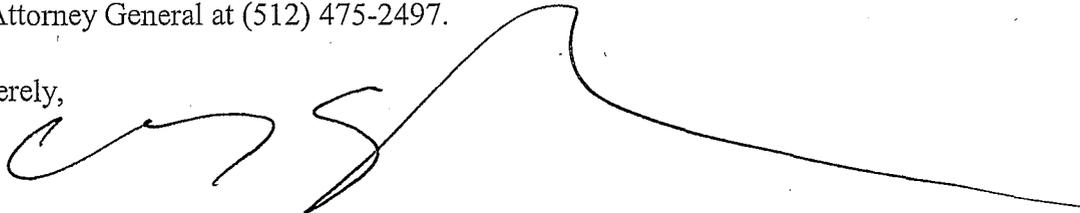
address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). However, you have also marked Internet identities that do not constitute e-mail addresses subject to section 552.137. Therefore, except for the Internet identities, which we have marked for release, you must withhold the e-mail addresses you have marked in accordance with section 552.137, unless the city receives consent for their release.

In summary, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and special circumstances. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. With the exception of the information we have marked for release, the city must withhold the e-mail addresses you have marked in accordance with section 552.137, unless the city receives consent for their release. The remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 336577

Enc. Submitted documents

cc: Requestor
(w/o enclosures)