



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2009

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

OR2009-03406A

Dear Ms. Byles:

This office issued Open Records Letter No. 2009-03406 (2009) on March 16, 2009. We have examined this ruling and determined that an error was made in its issuance. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on March 16, 2009. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). Your request was assigned ID# 344883 (FW PIR No. 1231-09).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified police report. You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued by this office in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you are withholding social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is

¹Section 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.

excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information does not pertain to the police report specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, you note that some of the requested information is the subject of a previous request for information to which this office issued Open Records Letter No. 2008-01096 (2008). In this ruling, we concluded that the City of Fort Worth (the "city") could only release the marked medical record in accordance with the MPA, and with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Records Letter No. 2008-01096. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

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 encompasses other statutes, including chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service provider confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

You state that the city is part of an emergency communications district established under section 772.218. You claim that the telephone numbers you have marked in the submitted call sheets were furnished by a 9-1-1 service provider. You also request that the telephone numbers and addresses be withheld from the submitted audio recording. Based on your representations and our review, we agree that the department must withhold the telephone numbers you have marked in the submitted call sheets under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, the telephone numbers and addresses contained in the submitted audio recording

were provided by the callers. Because this information was not provided by a 9-1-1 service provider, section 772.218 is not applicable to this information, and it may not be withheld under section 552.101.

Section 552.101 also encompasses Criminal History Record Information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") 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 ("DPS") maintains, except that 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 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 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. *See* Open Records Decision No. 565 at 10-12 (1990). We have marked CHRI that the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.²

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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. *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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

In summary, the department may continue to rely on Open Records Letter No. 2008-01096 as a previous determination and withhold or release the requested information in accordance with that ruling. The department must withhold the telephone numbers you have marked in the submitted call sheets under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code and common-law privacy. The remaining responsive 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 344883

Enc. Submitted documents

cc: Requestor
(w/o enclosures)