



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-03698

Dear Ms. Middlebrooks:

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# 411507 (PIR# 2010-11772).

The Dallas Police Department (the "department") received a request for information related to five specified addresses during a particular time period. You claim that portions of the submitted 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 representative sample of information.¹

Initially, we note that a portion of the requested information appears to be the subject of a previous ruling by this office. In Open Records Letter No. 2011-02699 (2011), this office ruled that portions of the information at issue must be withheld under sections 552.101 and 552.130 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must

¹We assume the "representative 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 those records contain substantially different types of information than that submitted to this office.

continue to rely on the prior ruling as a previous determination and withhold or release the submitted information we previously ruled on in accordance with Open Records Letter No. 2011-02699. *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). However, to the extent the information in the current request is not encompassed by the previous decision, we will address your arguments for the remaining 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." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication 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 furnished by a service supplier confidential. *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.

We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone numbers and addresses of 9-1-1 callers that the department seeks to withhold. We conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent it was furnished by a 9-1-1 service supplier. If the marked information was not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 also encompasses section 411.192 of the Government Code. Section 411.192 governs the release of all information maintained by DPS concerning the licensure of individuals to carry concealed handguns, and provides:

- (a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise

provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a), (b). You have marked a portion of the remaining information regarding a concealed handgun license that appears to have been received by the department from DPS. In this instance, the requestor is not a criminal justice agency, nor is the requestor the license holder whose information is at issue. Further, we note that section 411.193 is not applicable in this instance. *See id.* § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by the department during the preceding month available to the public). Therefore, the department must withhold the information you have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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) 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. Similarly, 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. You claim the submitted information contains confidential CHRI. We have marked the information that constitutes CHRI that is confidential under chapter 411. Accordingly, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, no portion of the remaining information consists of CHRI, and none of it may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides in part:

(a) [T]he 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261), § 101.003(a) (defining “child” for purposes of section 261.201 as “person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”). Upon review, we find that the information you have marked consists of files, reports, records, or working papers used or developed in an investigation of child abuse or neglect. Therefore, the marked information is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review, we find none of the remaining information identifies a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, none of the remaining information may be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. 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). In addition, this office has found 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Determinations under common-law privacy must be made on a case-by-case basis. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 373 at 4 (1983).

Upon review, we find that most of the information you have marked, as well as the information we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold this information under section 552.101 of the

Government Code in conjunction with common-law privacy. However, you have failed to demonstrate that any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of this information, which we have marked for release, may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim some of the remaining information is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The remaining information contains Texas motor vehicle record information pertaining to driver's licenses, license plates, and vehicle identification numbers. Thus, the department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.²

In summary, the department must continue to rely on Open Records Letter No. 2011-02699 as a previous determination and withhold or release the submitted information we previously ruled on in accordance with the prior ruling. Provided that the information you have marked consists of originating telephone numbers and addresses furnished by a 9-1-1 service supplier, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold under section 552.101 of the Government Code (1) the marked concealed handgun license information in conjunction with section 411.192 of the Government Code; (2) the marked CHRI in conjunction with federal law and chapter 411 of the Government Code; and (3) the information you have marked in conjunction with section 261.201 of the Family Code. Except for the information we have marked for release, the department must withhold the information you have marked and the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.³

²We note Open Records Decision No. 684 (2009) was issued by this office as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate and driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information to be released contains 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. Gov't Code § 552.147(b).

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 411507

Enc. Submitted documents

c: Requestor
(w/o enclosures)