



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-16046

Dear Mr. Wallach:

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# 434928 (PIR No. W010968).

The City of Fort Worth (the "city") received a request for all records pertaining to the requestor, a named individual, and two specified addresses for a specified time period. You state the city is releasing some information to the requestor. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ You further state you have redacted social

¹Open Records Letter Nos. 2006-14726 and 2007-00198 are previous determinations to the city authorizing it to withhold certain Texas motor vehicle record information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198.

security numbers pursuant to the section 552.147 of the Government Code.² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. A compilation of an individual’s criminal history record information 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, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. After reviewing the request and the submitted information, we find the requestor is seeking, in part, specific domestic violence incident reports involving herself and the named individual. Accordingly, this portion of the request does not implicate the named individual’s right to privacy, and the domestic violence incident reports involving the requestor and the named individual may not be withheld under section 552.101 on the basis of common-law privacy. However, to the extent the city maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In addition to the domestic violence incident reports, we note you have submitted records in which the named individual is not listed as a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the named individual’s criminal history and may not be withheld under section 552.101 on that basis. We will, however consider your remaining arguments against disclosure of this information and the domestic violence incident reports.

We note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011), this office issued previous determinations to the city authorizing the city to withhold the originating telephone numbers and addresses,

²Section 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. *See* Gov’t Code § 552.147(b).

respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You state the telephone numbers you have marked are the originating telephone numbers of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772. Furthermore, you state the address you have marked was also provided by a 9-1-1 service supplier established in accordance with Chapter 772. As such, the city must withhold the marked telephone numbers and the marked address under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code in accordance with the previous determinations issued to the city in Open Records Letter Nos. 2011-15641 and 2011-15956.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI 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." Gov't Code § 411.082(2). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas 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* 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. *See 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. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find a portion of the remaining information, which we have marked, constitutes CHRI and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. However, we find none of the remaining information constitutes CHRI and may not be withheld under section 552.101 on that basis.

As previously noted, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Additionally, as we also noted above, the Texas Supreme Court discussed the common-law privacy test requirements in the *Industrial Foundation* decision. In that decision, the Texas Supreme court determined that the types of information considered highly intimate or embarrassing 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. 540 S.W.2d at 683-685. Further, as previously noted, a compilation of an individual's criminal history record information is highly embarrassing information and generally not of legitimate concern to the public. However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. See Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find the information we have marked is protected under common-law privacy and must be withheld under section 552.101 of the Government Code on that basis. However, you have not demonstrated the remaining information you seek to withhold is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). The city must withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, other than domestic violence records also involving the requestor, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the marked telephone numbers and address under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code in accordance with the previous determinations issued to the city in Open Records Letter Nos. 2011-15641 and 2011-15956. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you have marked, as well as the

additional information we have marked, under section 552.130 of the Government Code. The city must release the remaining information to the requestor.³

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 433833

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information to be released includes the requestor's Texas driver's license number, which the city would ordinarily be required to withhold under section 552.130 of the Government Code, and the requestor's social security number, which the city would ordinarily be able to withhold under section 552.147 of the Government Code. Because sections 552.130 and 552.147 protect personal privacy, the requestor has a special right of access to her own Texas driver's license number and social security number. *See* Gov't Code § 552.023(a). However, as previously acknowledged, 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. *Id.* § 552.147(b). Thus, if the city receives another request for these same records from a person other than one with a right of access under section 552.023, the city is authorized to withhold the requestor's social security number under section 552.147(b) without the necessity of requesting an attorney general decision.