



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2013

Mr. Ron G. MacFarlane Jr.
Counsel for City of Cedar Hill
The MacFarlane Firm
3010 LBJ Freeway Suite 1200
Dallas, Texas 75234

OR2013-01301

Dear Mr. MacFarlane::

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# 481481.

The City of Cedar Hill (the "city"), which you represent, received a request for information involving a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 exception also encompasses common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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, and is generally not of legitimate concern to the public. *Cf. United States 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). In this instance, the requestor seeks access to "all criminal records and police reports for [a named individual]." Thus, this request for unspecified law enforcement records requires the city to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent it maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹ We note you have submitted information related to case number 10-002831 that does not depict the named individual as a suspect, arrested person, or criminal defendant. Thus, that information does not implicate the individual's privacy interests and may not be withheld on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. 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." *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). As you have not demonstrated any of the information related to case number 10-002831 consists of CHRI obtained from the NCIC or TCIC networks, the city may not withhold any of that information under section 552.101 of the Government Code in conjunction with federal law or subchapter F of chapter 411 of the Government Code.

We note the information related to case number 10-002831 includes motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state

¹As we are able to make this determination, we need not address the other exception you claim.

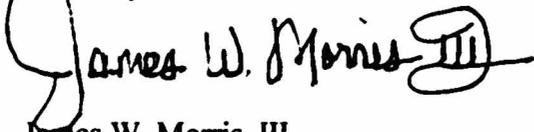
or country.² *See id.* § 552.130(a)(2). We have marked motor vehicle information the city must withhold under section 552.130(a)(2) of the Government Code.

In summary, the city must withhold (1) any information it maintains that depicts the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the motor vehicle information related to case number 10-002831 we have marked under section 552.130 of the Government Code. The rest of the submitted 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, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 481481

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).