



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

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

OR2013-02946

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# 479296 (Fort Worth No. W021938).

The Fort Worth Police Department (the "department") received a request for all 9-1-1 calls and reports pertaining to a specified address from January 1, 2008 to the date of the request. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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:

¹Although you also raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, you have waived your claim under this exception. *See* Gov't Code §§ 552.301, .302.

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find incident report number 08-95379 pertains to an investigation of alleged or suspected child abuse and is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, and based on our review, we determine incident report number 08-95379 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold incident report number 08-95379 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code encompasses section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center 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). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas 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). Thus, 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. Upon review, we find the Federal Bureau of Investigation (“FBI”) number you have marked in the remaining information constitutes CHRI generated by the FBI, which the

department must withhold under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses 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 satisfied. *Id.* at 681-82. The type of information considered intimate and 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. *Id.* at 683. This office has also 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Additionally, 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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information you have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

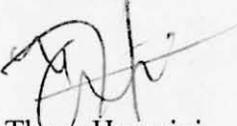
Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the department must withhold the driver's license number you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the following under section 552.101 of the Government Code: (1) incident report number 08-95379 in its entirety under section 261.201 of the Family Code; (2) the CHRI you have marked under chapter 411 of the Government Code; (3) and the information you have marked under common-law privacy. The department must withhold the driver's license number you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released.²

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 479296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains a social security number. 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. See Gov't Code § 552.147(b).