



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2014

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-00385

Dear Ms. Kretz:

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# 510077 (PIR No. W029497).

The City of Fort Worth (the "city") received a request for all police reports related to a named individual during a specified period. You state the city has released some information. You explain the city will redact a social security number and certain motor vehicle record information.¹ You claim portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, a portion of which consists of a representative sample.²

¹Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without requesting a decision from this office. *See* Gov't Code § 552.147(b). Section 552.130 of the Government Code permits a governmental body to redact certain motor vehicle record information without requesting a decision from this office, but the governmental body must provide notice to the requestor. *See id.* § 552.130(c)-(e).

²We 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 those submitted to this office.

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 of the Government Code 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. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 courthouses 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 a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We agree the present request requires the city to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual’s right to privacy. Therefore, to the extent the city maintains unspecified 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 in conjunction with common-law privacy.

You have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate that individual’s privacy interests, and the city may not withhold it under section 552.101 of the Government Code as a compilation of criminal history. Nonetheless, this office has concluded some kinds of medical information are generally highly intimate or embarrassing and must be withheld under common-law privacy. *See Open Records Decision No. 455* (1987). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing, and the city may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code 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.* at 10–12. Section 411.083 of the Government Code

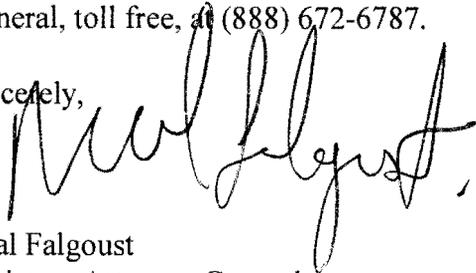
deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *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. Upon review, we find the information we marked constitutes confidential CHRI. The city must withhold that information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The remaining information does not constitute confidential CHRI, and the city may not withhold it under section 552.101 of the Government Code.

In summary, to the extent the city maintains unspecified 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 information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the CHRI we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 510077

Enc. Submitted documents

c: Requestor
(w/o enclosures)