



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2014

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2014-03460

Dear Ms. McGowan:

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# 515135 (DISD ORR# 12642).

The Dallas Independent School District (the "district") received a request for a specified district police internal affairs file. You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "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 §§ 411.081-.1409. 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 id.* § 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. 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 our review, we conclude the district must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, we find you have not demonstrated the remaining information constitutes confidential CHRI for the purposes of chapter 411. As such, the district may not withhold the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also 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 satisfied. *Id.* at 681-82. 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 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 we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note portions of the remaining information may be subject to sections 552.117, 552.1175, and 552.130 of the Government Code.¹ Section 552.117(a)(2) applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117(a)(2) protects a peace officer's personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). Accordingly, if the telephone number we have marked is a home telephone number or is a personal cellular telephone number that is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(2).² However, the district may not withhold the information we have marked if it is a cellular telephone number and the cellular telephone service is paid for by a governmental body.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information pertains to a peace officer not employed by the district. Thus, to the extent the individual whose information we have marked is a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the district must withhold the information we have marked under section 552.1175. If the individual whose information we have marked is no a longer licensed peace officer or no election is made, the district may not withhold this information under section 552.1175.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted

²We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

³In the event this individual's social security number is not excepted from disclosure under section 552.1175 of the Government Code, we note 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).

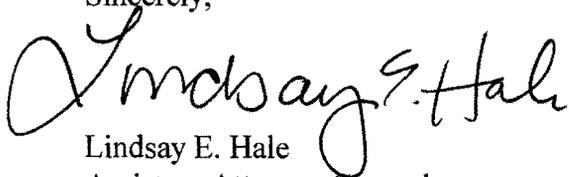
from public release. *Id.* § 552.130(a). We conclude the district must withhold the information we have marked under section 552.130.⁴

In summary, the district must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the telephone number we have marked is a home telephone number or is a personal cellular telephone number that is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information we have marked is a currently licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the district must withhold the information we have marked under section 552.1175 of the Government Code. The district must withhold the information we have marked under section 552.130 of the Government Code. The district 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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⁴We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. 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 id.* § 552.130(d), (e).

Ref: ID# 515135

Enc. Submitted documents

c: Requestor
(w/o enclosures)