



February 4, 2015

Ms. Mary Ann Powell
Counsel for the City of Waller
Olson & Olson LLP
Wortham Tower
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2015-02225

Dear Ms. Powell:

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# 552934 (Ref. No. COW14-004).

The Waller Police Department (the "department"), which you represent, received a request for all information related to a specified offense. You state the department has released some information to the requestor. You also inform us the department has redacted information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 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."

¹Section 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. *See* 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). Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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. *Id.* § 552.147(b).

Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find none of the submitted information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician, or information obtained from a medical record. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

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 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). The submitted information contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI.

Accordingly, we find the FBI number we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information to be highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

We note portions of the remaining information may be subject to sections 552.1175 and 552.130 of the Government Code.² Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

²The 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).

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We note some of the submitted videos, which we have indicated, contain the cellular telephone number of an individual who was a licensed peace officer at the time the information at issue was created. However, we are unable to determine from the information provided if the individual at issue is a currently-licensed peace officer. Thus, we must rule conditionally. Accordingly, to the extent the information we have indicated relates to an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the indicated information under section 552.1175 of the Government Code; however, the indicated information may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is not currently licensed as a peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), or if a governmental body pays for the cellular telephone service, the indicated information may not be withheld under section 552.1175. You state the department lacks the technological capability to redact the confidential information from the submitted video recordings. Accordingly, to the extent the information we have indicated relates to an individual who is currently licensed as a peace officer, who elects to restrict access to the information in accordance with section 552.1175(b), and to the extent a governmental body does not pay for the cellular telephone service, the department must withhold the video recordings we have indicated in their entirety under section 552.1175 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.130(a) of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). You state the submitted video recordings are excepted from disclosure under section 552.130. Further, as noted above, you state the department does not have the technological capability to redact the motor vehicle record information from the submitted video recordings. Upon review, we find the department must withhold the video recordings we have indicated in their entirety and the motor vehicle record information we have marked in the remaining documents under section 552.130 of the Government Code. However, we find none of the remaining information at issue consists of motor vehicle record information subject to section 552.130. Accordingly, none of the remaining information may be withheld under section 552.130 of the Government Code.

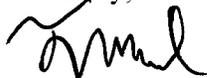
In summary, the department must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the

Government Code and federal law. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have indicated relates to an individual who is currently licensed as a peace officer, who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, and to the extent a governmental body does not pay for the cellular telephone service, the department must withhold the video recordings we have indicated in their entireties under section 552.1175 of the Government Code. The department must withhold the video recordings we have indicated in their entireties and the motor vehicle record information we have marked in the remaining documents under section 552.130 of the Government Code. The department 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 552934

Enc. Submitted documents

c: Requestor
(w/o enclosures)