



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Ms. Alexis G. Allen
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2015-17643

Dear Ms. Allen:

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# 577135 (Lancaster File# 72121).

The Lancaster Police Department (the "department"), which you represent, received a request for certain information pertaining to a specified incident. You indicate the department does not possess some of the requested information.¹ You state you have released some information. 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." 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

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

by the National Crime Information Center (the “NCIC”) or by 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). 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). 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. However, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in criminal justice system). We also note that the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). You state the submitted information constitutes CHRI generated by the TCIC. Upon review, the department must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code.² However, we find you have not demonstrated any of the remaining information constitutes confidential CHRI for the purposes of chapter 411. As such, the department not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

²As our ruling is dispositive as to this information, we need not address your remaining argument against disclosure.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373.

Upon review, we find portions of the submitted information contain information that satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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 from public release. Gov't Code § 552.130(a). Upon review, we find the audio and visual portions of the submitted video recordings contain information subject to section 552.130. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the submitted recordings in their entirety under section 552.130. *See* Open Records Decision No. 364 (1983). Moreover, portions of the remaining information also consist of motor vehicle record information subject to section 552.130. Thus, the department must withhold this information, which we have marked, on this basis.

We note portions of the remaining information are subject to section 552.136 of the Government Code.³ Section 552.136 states, in part, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the department must withhold the insurance policy numbers we have marked under section 552.136.

In summary, the department must withhold (1) the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the submitted video recordings in their entirety and the

³The 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 we have marked under section 552.130 of the Government Code; and (4) the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining 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.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,

A handwritten signature in black ink, appearing to read "Mili Gosar", with a long horizontal flourish extending to the right.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 577135

Enc. Submitted documents

c: Requestor
(w/o enclosures)