



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2015

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

OR2015-18125

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# 577479 (Reference #72198).

The Lancaster Police Department (the "department"), which you represent, received a request for all reports pertaining to the requestor, a named individual, and a specified address over a specified period of time. You state you have released some information to the requestor. You claim portions of the submitted information are 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. Section 552.101 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." Gov't Code § 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked constitutes CHRI, which the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.¹ However, we find you have failed to demonstrate how the remaining information consists of confidential CHRI. Therefore, the department may not withhold any of 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 (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 concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). We note dates of birth of members of the public are generally not highly intimate or embarrassing. See Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Although you reference *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. filed) (mem. op.), we note a petition for review was filed with the Texas Supreme Court on July 29, 2015. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of the information at issue pertains to the requestor and she has a special right of access under section 552.023 of the Government Code to the information pertaining to herself that would otherwise be confidential. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the information pertaining to the requestor may not be withheld from her. 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 you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

public interest. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a 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). We note section 552.130 protects personal privacy. Thus, the requestor has a special right of access to her own driver's license information. *See id.* § 552.023; ORD 481 at 4. Accordingly, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the following: (1) the CHRI we have 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; and (3) the driver's license 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.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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/som

²We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov't Code § 552.023; ORD 481 at 4. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 577479

Enc. Submitted documents

c: Requestor
(w/o enclosures)