



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2015

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-18805

Dear Ms. Honey:

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# 578448 (Fort Worth PIR# W043657).

The City of Fort Worth (the "city") received a request for two specified police reports. You state the city will redact certain information under sections 552.130 and 552.147 of the Government Code and in accordance with the previous determination issued to the city in Open Records Letter No. 2013-22304 (2013).¹ 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. Section 552.101 encompasses the doctrine of common-law privacy,

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact motor vehicle record information without requesting a decision from this office. *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 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without requesting a decision from this office. *See id.* § 552.147(b). Open Records Letter No. 2013-22304 authorizes the city to withhold certain criminal history record information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without requesting a decision from this office.

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. *See 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 established. *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. Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual’s privacy. Upon review, we find this is not a situation in which the entire report must be withheld to protect an individual’s privacy. Therefore, the city may not withhold the entire report under section 552.101 of the Government Code.

However, we find the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation* and generally must be withheld under section 552.101 of the Government Code. In this case, however, the submitted information indicates the requestor is the appointed power of attorney for the individual whose private information is at issue. *See Gov’t Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the city determines the requestor is this person’s authorized representative, the city may not withhold the information we marked under section 552.101 of the Government Code. If the city determines the requestor is not this person’s authorized representative, 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. 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. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy or the court’s ruling in *City of Dallas*.

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

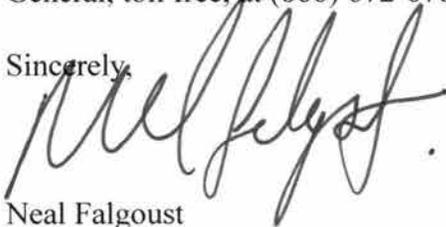
the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). The information we marked constitutes confidential CHRI. The city must withhold that information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, if the city determines the requestor is not an authorized representative of the person whose private information we marked, the city must withhold that 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 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/bhf

Ref: ID# 578448

Enc. Submitted documents

c: Requestor
(w/o enclosures)