



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2015-20155

Dear Mr. Toulet:

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# 581268 (Midland ID# 17139).

The Midland Police Department (the "department") received a request for all records, including specified types of information, pertaining to a specified incident involving the requestor's client. You state the department has provided some of the requested information to the requestor. You claim some of 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 information protected by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the City of Midland is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You further state the information you have marked under section 772.318 consists of the originating telephone

number of a 9-1-1 caller furnished by a 9-1-1 service supplier. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also 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* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 (Vernon) (to be codified as an amendment to Gov’t Code §411.083(a)). 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. Gov’t Code § 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 CHRI does not include driving record information. *Id.* § 411.082(2)(B). In addition, 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 the criminal justice system). Upon review, we find the information we have marked constitutes CHRI the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.¹ However, the remaining information at issue does not constitute CHRI for purposes of chapter 411 or federal law. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which provides, in relevant part, as follows:

¹We note an individual can obtain his own CHRI from DPS. *See* Gov’t Code § 411.083(b)(3).

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). We have marked concealed handgun license information. The department appears to have obtained the information from DPS. We note the requestor's client is the license holder. Therefore, except for the name, date of birth, gender, race, and zip code of the requestor's client, which the department must release pursuant to section 411.192(b) of the Government Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code.

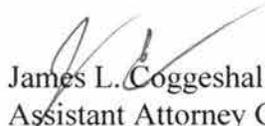
In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. Except for the name, date of birth, gender, race, and zip code of the requestor's client, which the department must release pursuant to section 411.192(b) of the Government Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code. The department must release the remaining information.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.

²Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 581268

Enc. Submitted documents

c: Requestor
(w/o enclosures)