



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2016

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-01549

Dear Ms. Alcorn:

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# 594904 (City File No. 1242).

The City of Corpus Christi (the "city") received a request for any and all records pertaining to a specified incident. You state the city will redact information pursuant to Open Records Letter No. 2011-16393 (2011).¹ You claim some of the submitted information is not subject to the Act. You also 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.

Initially, we address your claim that the information you have marked and indicated is not subject to the Act. The judiciary is expressly excluded from the requirements of the Act.

¹Open Records Letter No. 2011-16393 is a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, the origination telephone numbers and addresses of 9-1-1 callers furnished to the city by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary, and therefore, not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. You state, and the submitted information reveals, portions of the submitted information consist of information obtained pursuant to a grand jury subpoena. You explain this information is held by the city as an agent for the grand jury. Based on this representation, we conclude the information you have marked and indicated is held by the city as an agent for the grand jury, and it is not subject to the Act. Our ruling does not address the public availability of this information, and the city need not release it in response to this request.²

Next, we note the city seeks to withhold the dates of birth of public citizens. In Open Records Letter No. 2016-00831 (2016), this office issued a previous determination to the city's police department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, the city must withhold the dates of birth of public citizens in accordance with the previous determination issued in Open Records Letter No. 2016-00831.

Section 552.101 of the Government Code excepts from public 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 made confidential by other statutes. The submitted information consists of a Firearms Trace Summary from the National Trace Center of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF"). Public Law number 111-117 states, in pertinent part,

[B]eginning in fiscal year 2010 and thereafter, no funds appropriated under [the Consolidated Appropriations Act, 2010] or any other [a]ct may be used to disclose part or all of the contents of the Firearms Trace System database

²As our ruling is dispositive, we need not address your argument under the Act against disclosure of this information.

maintained by the National Trace Center of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), except to: (1) a Federal, State, local, or tribal law enforcement agency or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] . . . entit[y] described in (1) . . . of this provision would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State[.]

Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3128 (2009). We understand Firearms Trace Summaries contain content from the Firearms Trace System database maintained by the National Trace Center. Upon review, we find the submitted Firearms Trace Summary is confidential under Public Law number 111-117. *See Miller v. U.S. Dep't of Justice*, 562 F. Supp. 2d 82, 111 (D.D.C. 2008) (holding Firearms Trace Report properly withheld under Freedom of Information Act exemption 3, which covers records that are exempt from disclosure by statute). Accordingly, the city must withhold the submitted Firearms Trace Summary under section 552.101 of the Government Code in conjunction with Public Law number 111-117.

Section 552.101 of the Government Code 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded 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) (personal financial information includes choice of particular insurance carrier), 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). Upon review, we find the information we have indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.1175 of the Government Code.³ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Thus, to the extent the information we have indicated relates to currently licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold it under section 552.1175 of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), the indicated information may not be withheld under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. *Id.* § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information you have marked and indicated, in addition to the information we have marked and indicated, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the city must withhold the information we have indicated under section 552.136 of the Government Code.

In summary, the submitted grand jury records you have marked and indicated are not subject to the Act and need not be released in response to the request. The city must withhold the dates of birth of public citizens in accordance with the previous determination issued in Open Records Letter No. 2016-00831. The city must withhold the submitted Firearms Trace Summary under section 552.101 of the Government Code in conjunction with Public Law number 111-117. The city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have indicated relates to currently licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold it under section 552.1175 of the Government Code. The city must withhold

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).

the motor vehicle record information you have marked and indicated, in addition to the information we have marked and indicated, under section 552.130 of the Government Code. The city must withhold the information we have indicated under section 552.136 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 594904

Enc. Submitted documents

c: Requestor
(w/o enclosures)