



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2016

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

OR2016-07486

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# 604087 (FW PIR No. W048579).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You state the city has released some of the requested information. You state the city will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information concerns an alleged violation of section 32.51 of the Penal Code, which provides, "[a] person commits an offense if the person, with intent to harm or defraud another, obtains, possesses, transfers, or uses identifying information of . . . another person without the other person's consent[.]" Penal Code § 32.51(b)(1). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides as follows:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

(1) the name of the victim;

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For the purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted information pertains to a report of credit card abuse, which constitutes an alleged violation of section 32.51. We note the requestor is the victim of the alleged credit card abuse listed in the report, and the alleged offense occurred after September 1, 2005. Therefore, the submitted report is subject to article 2.29 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold the report under section 552.108 of the Government Code, this exception does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the submitted report may not be withheld under section 552.108 of the Government Code. However, a portion of the submitted information is confidential pursuant to sections 552.101 and 552.130 of the Government Code.² Because sections 552.101 and 552.130 are confidentiality provisions, we will address the applicability of these exceptions to the submitted information.

You state the city will redact Federal Bureau of Investigation ("FBI") numbers pursuant to a previous determination issued to the city in Open Records Letter No. 2013-22304 (2013).³ We note the remaining information contains an additional FBI number. Section 552.101 of the Government Code excepts from public disclosure "information considered to be

²The 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).

³Open Records Letter No. 2013-22304 is a previous determination issued to the city authorizing it to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the need of requesting a ruling from this office when requests for such numbers are not made by the individuals or entities who are authorized to obtain them under chapter 411 of the Government Code. *See* Open Records Decision No. 673 (2001) (listing the elements of second type of previous determination under section 552.301(a) of the Government Code).

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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* 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, or subchapter E-1 of the Government Code. *See 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find the FBI numbers you have marked, in addition to the information we have marked, consist of CHRI that is confidential under section 411.083. Thus, the city must withhold the information you marked, in addition to the information we marked, under section 552.101 in conjunction with section 411.083 of the Government Code.⁴

You state the city will redact dates of birth pursuant to a previous determination issued to the city in Open Records Letter No. 2016-00620 (2016).⁵ We note the remaining information contains additional dates of birth. Further, you marked the requestor’s date of birth. 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 and 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

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵Open Records Letter No. 2016-00620 is a previous determination issued to the city authorizing it to withhold, under section 552.101 of the Government Code in conjunction with common-law privacy, the dates of birth of living public citizens without the necessity of requesting an attorney general decision. This previous determination is not applicable to dates of birth requested by a person, or the authorized representative of a person, whose date of birth is at issue nor is it applicable to dates of birth contained in court-filed documents. *See* Open Records Decision No. 673 (2001) (listing the elements of second type of previous determination under section 552.301(a) of the Government Code).

embarrassing. See Open Records Decision No. 455 (1987). Further, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.⁶ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3.

Upon review, we find portions of the dates of birth you marked, in addition to the information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a right of access to her date of birth that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a) (“[a] person . . . has special right of access, beyond the right of the general public, to information held by governmental body that relates to the person and that is 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 herself). Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked, in addition to the information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the city will redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.⁷ We note the remaining information contains additional motor vehicle record information and you marked information you have not demonstrated is motor vehicle record information. 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 a state identification number is not motor vehicle record information and may not be withheld under section 552.130. Accordingly, with the exception of information we

⁶Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov't Code § 552.102(a).

⁷Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. 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).

marked for release, the city must withhold the motor vehicle record information you have marked, in addition to the information we marked, under section 552.130 of the Government Code.

In summary, the city must withhold the information you marked, in addition to the information we marked, under section 552.101 in conjunction with section 411.083 of the Government Code. With the exception of the information we marked for release, the city must withhold the information you marked, in addition to the information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the motor vehicle record information you have marked, in addition to the information we marked, under section 552.130 of the Government Code. The remaining information must be released.⁸

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 604087

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁸We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD No. 481 at 4.