



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2007

Ms. Kelly E. Pagan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-11951

Dear Ms. Pagan:

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# 289419.

The City of Fort Worth (the "city") received a request for an investigation file pertaining to a specified accident. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, the city has redacted social security numbers from the submitted information under section 552.147 of the Government Code. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. We note that one of the social security numbers you have redacted pertains to a deceased individual. Section 552.147 is not applicable to the social security number of a deceased individual. Therefore, the city may not withhold the social security number of the deceased individual under section 552.147 of the Government Code. The city may, however, withhold the social security number it has redacted of the living individual under section 552.147.¹

¹Section 552.147(b) 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 under the Act. Gov't Code § 552.147(b).

Next, you state that the city will withhold Texas motor vehicle record information pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) (authorizing the city to withhold a Texas driver's license number, identification number, license plate number, and license year of a motor vehicle) and 2007-00198 (2007) (authorizing the city to withhold class designations, restrictions, expiration dates, license year of a Texas issued driver's license, and a vehicle identification number). *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). We note, however, that portions of the information you have redacted pertain to a deceased individual. These previous determinations do not pertain to a deceased individual's section 552.130 information. Section 552.130 of the Government Code exempts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Section 552.130 protects personal privacy. Because privacy is a personal right that lapses at death, section 552.130 is not applicable to a deceased individual's Texas motor vehicle record information. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Therefore, the city may not withhold any of the information it has redacted or highlighted, which pertains to the deceased individual, under section 552.130. The remaining information you have redacted and highlighted pursuant to the previous determinations pertains to a living individual, and may be withheld. The city also must withhold the additional Texas motor vehicle record information we have marked under section 552.130.

We note that the city also seeks to withhold the Texas driver's license numbers, vehicle identification numbers, license plate numbers and years, and class designations contained in the submitted CRB-3 accident reports pursuant to the previous determinations. The city also seeks to withhold an insurance policy number in the submitted CRB-3 accident reports under section 552.136. We note that the previous determinations do not apply to Texas motor vehicle information in a CRB-3 accident report. The CRB-3 accident report is governed by section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has provided the city with two of the pieces of information. Thus, you must release the submitted accident reports in their entirety under section 550.065(b).

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Gov't Code § 552.101. This section encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. You state that the city is part of an emergency communication district that was established under section 772.218, which provides in part:

(a) As part of a computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscriber and the address associated with the number.

...

(c) Information furnished under this section is confidential and is not available for public inspection.

Health & Safety Code § 772.218(a), (c).² Upon review, we determine that the submitted information does not contain the originating telephone numbers or addresses of 9-1-1 callers. Therefore, no portion of the submitted information may be withheld under section 552.101 in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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 law with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the 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). 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any

²Subchapter C of chapter 772 governs counties with populations of more than 860,000. *See* Health & Safety Code § 772.204.

other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. However, we note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov't Code § 411.082(2)(b) (definition of CHRI does not include driving record information). We also note that because the laws that govern the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. We have marked the information that constitutes CHRI and is confidential under section 411.083. Therefore, the information we have marked must be withheld under section 552.101 of the Government Code. Because the city has not demonstrated how any portion of the remaining information it has marked constitutes CHRI, it may not be withheld under section 411.083.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). The lien information we have marked constitutes personal financial information. Further, we find that there is not a legitimate public interest in the release of this information. Accordingly, the city must withhold the lien information we have marked, as well as the personal financial information we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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.” Gov't Code § 552.136. The city must, therefore, withhold the bank account and credit card numbers we have marked under section 552.136 of the Government Code.

Finally, you raise section 552.137 of the Government Code for portions of the remaining information. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. Accordingly, the city may withhold the e-mail addresses you have marked, in addition to the e-mail address we have marked, under section 552.137. These e-mail addresses do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the relevant members

of the public have consented to the release of these e-mail addresses. Therefore, the city must withhold the marked e-mail addresses under section 552.137.

In summary, the city must withhold the criminal history record information we have marked under section 552.101 in conjunction with 411.083 of the Government Code. The city also must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information that pertains to living individuals, which it has marked, in addition to the information we have marked, under section 552.130. Finally, the city must withhold the account and credit card numbers we have marked under section 552.136 and the marked e-mail addresses under section 552.137. The remaining submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

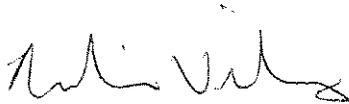
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 289419

Enc. Submitted documents

c: Mr. Ali Munoz
5746 Richmond Avenue
Dallas, Texas 75206
(w/o enclosures)