



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR2008-06738

Dear Ms. Byles:

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# 310191.

The City of Fort Worth (the "city") received a request for all reports pertaining to accident report number 07-141041. You state that the city has released some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also inform us that the city has redacted certain Texas motor vehicle record information pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). 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. This exception encompasses information that other statutes make confidential. The submitted documents include two CRB-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code 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. *Id.* § 550.065(c)(4). Under this provision, a 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 not provided the city with two of the required pieces of information. Thus, the city must withhold the CRB-3 accident report forms under section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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 met. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the city asserts that "complying with this request would require the city to compile the criminal history of [an] individual and therefore implicate the individual's right to privacy as contemplated in *Reporters Committee*." We disagree. The present request seeks information pertaining to a specific accident, as opposed to information pertaining to an individual's criminal history. Upon review, we conclude that the city has failed to establish that the request requires the city to compile the criminal history of any individual. Moreover, the submitted documents do not constitute a compilation of an individual's criminal history. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information does include criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, which is also encompassed by section 552.101. 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 CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas 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. Furthermore, 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 chapter 411, subchapter F of the Government Code. We note that the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). Upon review, we conclude that the city must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications 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. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You assert that the emergency communication district here is subject to section 772.218, and that the highlighted telephone numbers and addresses of 9-1-1 callers within the submitted call sheet were furnished by a 9-1-1 service provider. We note, however, that the cellular telephone service provider information that you have highlighted does not constitute an originating telephone number or address for the purposes of section 772.218 of the Health and Safety Code. Thus, the cellular telephone service provider information must be released. Furthermore, the city's markings of the telephone numbers and addresses are inconsistent. Because of this inconsistency, we cannot determine which of the submitted telephone numbers and addresses are subject to chapter 772 of the Health and Safety Code. Accordingly, the city must withhold only the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier. The remaining telephone numbers and addresses must be released.

In summary, the city must withhold the submitted CRB-3 accident report forms pursuant to section 550.065(b) of the Transportation Code. The city must also withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code and the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier under section 772.218 of the Health and Safety Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 310191

Enc. Submitted documents

c: Ms. Heather Rowe
State Farm Insurance Company
P.O. Box 799011
Dallas, Texas 75379
(w/o enclosures)