



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-12413

Dear Mr. Phillips:

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# 321127.

The Fort Worth Police Department (the "department") received two requests from different requestors, an attorney and an insurance representative, for accident investigation file number 08-9609. You state you are withholding social security numbers under section 552.147 of the Government Code.¹ You claim portions of the submitted investigation documents are excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note you have marked telephone numbers you indicate are excepted under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. Although you have provided no arguments regarding this information, we will consider the applicability of the claimed exception because it is a mandatory exception to disclosure. Section 552.101 of the Government Code excepts from disclosure

¹ We note section 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.

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. We understand the City of Fort Worth is part of an emergency communication district established under section 772.218 of the Health and Safety Code. Thus, if the telephone numbers you have marked in the submitted information were provided by a 9-1-1 service supplier, the department must withhold the telephone numbers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. If the telephone numbers you have marked were not provided by a 9-1-1 service supplier, the department may not withhold the telephone numbers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 Department of Public Safety (“DPS”) maintains, except that 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. Similarly, 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 driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). You have marked information you claim is confidential CHRI. Upon review, however, we find the information you have marked consists of only driving record information. Accordingly, the department may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. As you have raised no other arguments against disclosure for this information, it must be released.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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 established. *Id.* at 681-82. 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). You have marked lien information that constitutes personal financial information. Further, we find there is not a legitimate public interest in the release of this information. Thus, the department must withhold the lien information you have marked under section 552.101 in conjunction with common-law privacy.

You also assert some of the accident scene photographs of a deceased individual are protected by common-law privacy under section 552.101. We note, however, the right of privacy lapses at death; thus, information may not be withheld on the basis of the privacy interests of a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). However, the United States Supreme Court recognized that surviving family members can have a privacy interest in information relating to their deceased relatives. See *Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). You state you have not been able to contact the family of the deceased individual to notify them of the request and of their right to assert a privacy interest in the photographs at issue. Thus, because we do not have a representation from the family of the deceased individual, we have no basis for determining that the family has any privacy interest in the photographs of the deceased individual. Therefore, common-law privacy is not applicable to these photographs. As you have raised no other exceptions to disclosure for the photographs at issue, they must be released.

You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the City of Fort Worth 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 note, however, a portion of the redacted information pertains to a license plate year label, rather than an actual license plate year. Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Although a license plate year is protected by section 552.130, the label of that information is not. Thus, the department may not withhold this information, which we have marked for release, under section 552.130 of the Government Code.

You have marked additional information you claim is confidential under section 552.130.² Although we agree the information you have marked is generally protected by section 552.130, we note section 552.130 protects privacy interests. In this case, some of the information you seek to withhold pertains to the attorney requestor's client. Thus, the attorney requestor has a right of access under section 552.023 of the Government Code to his client's Texas motor vehicle record information. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Consequently, the department may not withhold the client's Texas motor vehicle record information from the attorney requestor under section 552.130 of the Government Code. The remaining marked Texas motor vehicle record information, and the additional information we have marked, must be withheld from the attorney requestor under section 552.130 of the Government Code.

Some of the information you have marked under section 552.130 pertains to the vehicles involved in the accident at issue. The insurance requestor indicates her company insures the company that owns these vehicles; thus, she may have a right of access under section 552.023 to the vehicle company's Texas motor vehicle record information. *Id.* It is not clear, however, whether or not the insurance requestor is acting as the vehicle company's authorized representative. Thus, if the insurance requestor is the vehicle company's authorized representative, then she has a right of access under section 552.023, and the vehicle company's Texas motor vehicle record information must be released to the insurance requestor. The remaining marked Texas motor vehicle record information, and the additional information we have marked, must be withheld from the insurance requestor under section 552.130 of the Government Code. If the insurance requestor is not the vehicle company's authorized representative, then she does not have a right of access, and the Texas motor vehicle record information you have marked, in addition to the information we have marked, must be withheld under section 552.130 of the Government Code.

You have marked an e-mail address you claim is subject to section 552.137 of the Government Code, which 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). *See id.* § 552.137(a)-(c). The e-mail address you have marked is not specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

² We note the types of additional information the department seeks to withhold under section 552.130 were not addressed in the previous determinations issued to the City of Fort Worth in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).

In summary, if the telephone numbers you have marked in the submitted information were provided by a 9-1-1 service supplier, the department must withhold the telephone numbers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the lien information you have marked under section 552.101 in conjunction with common-law privacy. The department must release the redacted information we have marked. The department must withhold from the attorney requestor under section 552.130 of the Government Code the Texas motor vehicle record information you have marked, and the additional information we have marked, that does not pertain to the attorney requestor's client. If the insurance requestor is the vehicle company's authorized representative, the department must withhold from the insurance requestor under section 552.130 of the Government Code the Texas motor vehicle record information you have marked, and the additional information we have marked, that does not pertain to the vehicle company. If the insurance requestor is not the vehicle company's authorized representative, the Texas motor vehicle record information you have marked, in addition to the information we have marked, must be withheld under section 552.130 of the Government Code. The department must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. The remaining 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). If the governmental body does not file suit over 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).

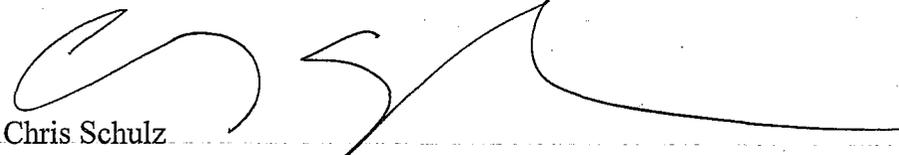
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CHS/LBW/ma

Ref: ID# 321127

Enc. Submitted documents

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