



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 24, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
The City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2009-08699

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# 346790.

The Fort Worth Police Department (the "department") received three requests for all information pertaining to a specified incident. You state you have no photographs or measurements responsive to the requests.<sup>1</sup> You state you are releasing most of the requested information. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Section 552.147(b) of the Government Code authorizes a government 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Gov’t Code § 552.101. You have marked an address and telephone number in the submitted call sheet that you seek to withhold under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.218 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See Open Records Decision No. 649 (1996)*. We understand the City of Fort Worth to be part of an emergency communication district that was established under section 772.218.<sup>3</sup> You state the telephone number you have marked was provided by a service provider. Thus, we determine that the information you have marked in the submitted call sheet is excepted from public disclosure 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, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Gov’t Code § 411.083. 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 id.* 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 Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). A portion of the submitted information constitutes CHRI generated by TCIC and NCIC. The department must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be

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<sup>3</sup> Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

established. *Id.* at 681-82. Additionally, 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, no portion of the remaining information may be withheld on the basis of common-law privacy.

You state the department has redacted certain Texas-issued motor vehicle record information relating to living individuals pursuant to the previous determinations issued in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See Gov't Code* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations). You seek to withhold additional motor vehicle record information, which you state lies beyond the scope of the previous determinations. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license [or] motor vehicle title or registration issued by an agency of this state[.]" *Gov't Code* § 552.130(a)(1), (2). The information you have marked, in addition to the information we have marked, is confidential under section 552.130 of the Government Code and must be withheld.

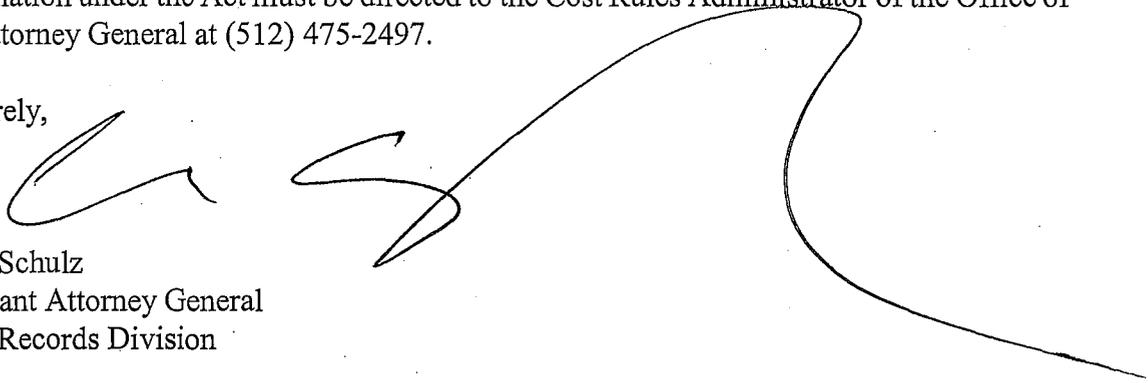
You have also marked an insurance policy number under section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. This office has concluded that insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number it has marked under section 552.136 of the Government Code.

In summary, the department must withhold the marked information under section 552.101 in conjunction with (1) section 772.218 of the Health and Safety Code, (2) section 411.083 of the Government Code, and (3) common-law privacy. The department must also withhold the information you have marked, and the information we have marked under section 552.130. The department must withhold the information you have marked under section 552.136. The remaining information must be released.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Chris Schulz', is written over the signature line and extends into the right margin of the page.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 346790

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)