



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

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

OR2009-12277

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# 353803 (City Request No. 4099-09).

The City of Fort Worth (the "city") received a request for the call sheets for two specified reports. You state that you have released some of the requested information. You state you have redacted certain Texas motor vehicle record information relating to an individual other than the requestor under section 552.130 of the Government Code 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). You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information concerns sex offenders who are subject to registration under chapter 62 of the Code of Criminal Procedure. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential

¹Section 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.

by law, either constitutional, statutory, or by judicial decision” and encompasses information protected by other statutes. Gov’t Code § 552.101. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Department of Public Safety (“DPS”) sex offender registration database: the person’s full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver’s license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person’s social security number, driver’s license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). To the extent the submitted information contains sex offender information subject to article 62.005, the city must withhold or release this sex offender information in accordance with article 62.005(b) of the Code of Criminal Procedure.

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. *Id.* § 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, which we have marked, constitutes CHRI generated by TCIC and NCIC. The city must withhold this information pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. However, none of the remaining information constitutes CHRI for the purposes of section 411.083, and none of the remaining information may be withheld on this basis.

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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov't Code* § 411.082(2)(B). Information relating to an individual's current involvement in the criminal justice system is also not excepted under section 552.101 in conjunction with common-law privacy. Upon review, we determine that the remaining information you have marked under section 552.101 is not the type of information excepted from disclosure under common-law privacy. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note that the remaining information contains Texas motor vehicle record information. Section 552.130 excepts 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[.]"² *Id.* § 552.130. We note that information relating to a driver's license issued by another state or country may not be withheld under section 552.130. *See Gov't Code* § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the submitted information contains sex offender information subject to article 62.005, the city must withhold or release this sex offender information in accordance with article 62.005(b) of the Code of Criminal Procedure. The city must withhold the CHRI we have marked in the submitted information under section 552.101 in conjunction with section 411.089 of the Government Code. The city must also withhold the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Texas motor vehicle information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 353803

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The remaining information contains social security numbers, which may be redacted pursuant to section 552.147(b) of the Government Code.