



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-02270

Dear Ms. Valkavich:

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# 370220 (COSA File No. 09-1480).

The City of San Antonio (the "city") received a request for information pertaining to all traffic accidents involving a named city police officer. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a court-filed document that is subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed document, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See*

¹ Although, you also generally raised most of the exceptions to disclosure under the Act, you have only provided arguments regarding the applicability of sections 552.108 and 552.130 of the Government Code. Since you have not submitted arguments concerning the remaining exceptions you raise, we assume that you no longer urge them. *See* Gov't Code §§ 552.301(b), (e), .302

id. § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the city may not withhold the court-filed document under section 552.108. As no other exceptions against disclosure are raised for this information, the marked court-filed document must be released to the requestor.

Next, we address your claim under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “the requested investigation file pertains to a case that is still open.” However, we note that you have submitted, as information responsive to the present request, information pertaining to four separate accidents occurring in 2004 and 2006. You do not specifically explain how the submitted information is related to accidents that resulted in currently pending criminal investigations or prosecutions. Additionally, upon review of the documents, we note that some of the information at issue clearly indicates that it pertains to a closed investigation of an accident that did not result in charges being filed. Thus, because you have not identified any submitted information that pertains to a pending *criminal* investigation or explained how its release would otherwise interfere with law enforcement, we find that you have failed to demonstrate the applicability of section 552.108 to any of the remaining information. Accordingly, no information may be withheld under section 552.108.

We note that some of the remaining information is subject to section 552.101 of the Government Code, which excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov't Code § 552.101. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 DPS may

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

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 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. Upon review, we find that the information we have marked consists of CHRI. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code and federal law.

Next, we note that the submitted documents include a CRB-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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 of the items of information specified by the statute. *Id.* In this instance, 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, which we have marked, from the requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code 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. *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 related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In this instance, one of the submitted documents contains motor vehicle lien information, which we have marked. If the marked

information relates to a personal financial obligation of a living individual, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to 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.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Furthermore, common-law privacy protects the interests of individuals, not those of financial institutions and other business entities.³ Thus, if the marked lien information relates only to the financial interests of a deceased individual or a business entity, the information is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

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. Upon review, we find that the information we have marked is intimate or embarrassing and of no legitimate public interest. Therefore, the city must withhold the compilation of criminal history information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note section 552.1175 of the Government Code may apply to a portion of the remaining information. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

³See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy).

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We note that section 552.1175 applies to records containing information pertaining to an employee of a governmental body when the governmental body is not holding the records in an employment capacity. We have marked the home address and social security number of the named individual, which is contained in a city police department investigation file pertaining to a traffic accident. If the named individual is a currently licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. If the named individual is not a currently licensed peace officer or does not elect to restrict public access to the information in accordance with section 552.1175(b), the city may not withhold the marked information under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or a personal identification document issued by a Texas agency. *Id.* § 552.130(a)(1), (2). We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains to solely to a deceased individual may not be withheld under section 552.130. *See* 589 S.W.2d 489, 491. Accordingly, the city may not withhold the Texas driver's license information pertaining to the deceased individual based on section 552.130. We have marked Texas license plate information and the vehicle identification number pertaining to a vehicle driven by an individual who is now deceased. If this information pertains to a vehicle owned by a living person, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it pertains to a deceased individual. The city must also withhold the remaining Texas motor vehicle record information and Texas personal identification information we have marked, as well as the additional Texas motor vehicle record information we have indicated in the submitted photographs, under section 552.130.⁴

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code and federal law. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers, Texas license plate numbers, and portions of photographs that depict Texas license plate numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Transportation Code. If the motor vehicle lien information we have marked relates to a personal financial obligation of a living individual, the city must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the compilation of criminal history information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the named individual is a currently licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have marked under section 552.1175 of the Government Code. If the marked Texas license plate information and vehicle identification number of the vehicle that was driven by the individual who is now deceased pertains to a vehicle owned by a living person, it must be withheld under section 552.130 of the Government Code. The city must withhold the remaining information we have marked, as well as the additional information we have indicated in the submitted photographs, under section 552.130 of the Government Code. The remaining information must be released.⁵

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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

⁵We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code 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.

Ref: ID# 370220

Enc. Submitted documents

c: Requestor
(w/o enclosures)