



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Ms. J. Middlebrooks and Ms. P. Armstrong
Assistant City Attorneys
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2010-09416

Dear Ms. Middlebrooks and Ms. Armstrong:

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# 384072 (DFR PIR service # 310218, Dallas ORR: 2010-3549).

The City of Dallas (the "city") received a request for all records pertaining to case number 0072233-X. The city Police Department (the "police department") and the city Fire-Rescue Department (the "fire-rescue department") have submitted separate correspondence to this office. The police department claims that the submitted information is excepted from disclosure under section 552.108 of the Government Code and the fire-rescue department claims that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the submitted information is not responsive to the instant request for information because it was not in existence at the time the city received the present request. This ruling does not address the public availability of any information that

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

is not responsive to the request and the city is not required to release that information in response to the request.

Section 552.108 of the Government Code 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). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The fire-rescue department states its Arson Unit, a law enforcement agency, and the Dallas County District Attorney, a prosecuting agency, object to release of the information it has marked under section 552.108. The police department states release of the information it has marked could hinder the criminal investigation and prosecution at this time. Both the police department and fire-rescue department state that the marked information is related to a pending criminal prosecution. Based on these representations, we conclude the city may withhold the marked information under section 552.108(a)(1).² *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 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 that the city is part of an emergency communication district that was established under section 772.318.³ The fire-rescue department indicates that the telephone number it has marked is related to a 9-1-1 call and was obtained from a 9-1-1 service provider. Based on these representations, we conclude the city must withhold the telephone number the fire-rescue department has marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

²As our ruling is dispositive, we need not address the fire-rescue department’s remaining argument against disclosure of this information.

³Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See id.* § 411.089(b). Upon review, we find that the information we have marked constitutes CHRI and is confidential under section 411.083. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. However, because the fire-rescue department has not demonstrated how the remaining information it has marked constitutes CHRI for purposes of section 411.083, it may not be withheld on that basis.

The fire-rescue department also raises section 552.101 in conjunction with common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and 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 this test must be established. *See id.* at 681-82. Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). A compilation of an individual's criminal history is also 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 confidential and must be withheld under section 552.101 in conjunction with common-law privacy.

The fire-rescue department asserts that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130. However, the remaining information the fire-rescue department has marked does not consist of Texas motor vehicle record information for the purposes of section 552.130. Accordingly, no portion of the remaining information the fire-rescue department has marked may be withheld on that basis.

Section 552.136(b) of the Government Code provides 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." The city must withhold the insurance policy number the fire-rescue department has marked under section 552.136.⁴

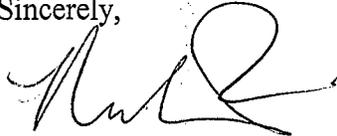
In summary, the city may withhold the information the police department and fire-rescue department have marked under section 552.108(a)(1) of the Government Code. The city must withhold the telephone number the fire-rescue department has marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The city must withhold the information the fire-rescue department has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy number the fire-rescue department has marked under section 552.136 of the Government Code. 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.

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 under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a stylized flourish at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 384072

Enc. Submitted documents

cc: Requestor
(w/o enclosures)