ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

Mr. Ron G. MacFarlane, Jr.
Ron G. MacFarlane, Jr., P.C.
3010 LBJ Freeway, Suite 1200
Dallas, Texas 75234

OR2010-14986

Dear Mr. MacFarlane:

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# 395528.

The City of Cedar Hill (the "city"), which you represent, received a request for all police records for the requestor and a named individual from November 6, 2003 until the date of the request and the number of all males and females arrested or ticketed by the city's police department related to domestic disputes during the last ten years. You state you have provided the requestor with all police records for herself. You further state you do not have any information responsive to the request for the number of all males and females arrested or ticketed related to domestic disputes.[1] You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to

[1]The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the written request for information. *See* Gov't Code § 552.301(e). The city requested a ruling from this office on July 28, 2010. However, you did not submit a copy of the written request for information until August 12, 2010. Thus, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

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 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You state the present request requires the city to compile unspecified law enforcement records concerning a named individual, other than the requestor, and thus implicates this individual's right to privacy. However, after reviewing the request and the submitted information, we find the requestor is seeking in part specific domestic violence reports involving herself and the named individual. Accordingly, this portion of the request does not implicate the named individual's right to privacy, and the incident reports of domestic violence involving the requestor and the named individual may not be withheld under

section 552.101 on the basis of common-law privacy. However, to the extent the city maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code 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 the Department of Public Safety ("DPS") maintains, except 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Accordingly, the city must withhold the CHRI we marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. However, none of the remaining information at issue constitutes CHRI that may be withheld on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code. Section 411.192 governs the release of all information maintained by DPS concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

> (a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

> (b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.
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> . . .
>
> (d) This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by [DPS].

Id. § 411.192(a), (b), (d). It appears the city received the concealed handgun license information we have marked under section 411.192 from DPS. In this instance, the requestor is not a criminal justice agency, nor is the requestor a license holder whose information is at issue. Further, we note section 411.193 is not applicable in this instance. *See id.* § 411.193 (making statistical report including number of licenses issued, denied, revoked, or suspended during the preceding month available to the public). Therefore, the city must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.192.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which governs the public availability of fingerprints. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is excempt from disclosure under [the Act]." *Id.* §§ 560.003; .001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Thus, the city must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. *Id.* § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

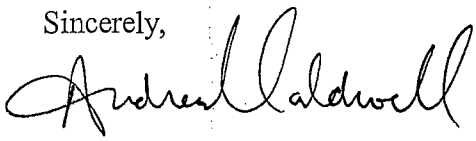
In summary, to the extent the city maintains law enforcement records, other than the incident reports of domestic violence, depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold (1) the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (2) the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code; (3) the fingerprints we have marked under section 552.101 of the

Government Code in conjunction with section 560.003 of the Government Code; and (4) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.[2] 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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/em

Ref: ID# 395528

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[2]We 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 fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code and Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

[3]We note the remaining information being released contains a social security number that does not belong to the requestor. 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.