



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-15538

Dear Ms. Sangsvang:

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# 396355 (Fort Worth Public Information Request No. W002663).

The City of Fort Worth (the "city") received a request for a specified police report and all call sheets pertaining to a specified address, the requestor, and a named individual. You state that you are withholding social security numbers under 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 you have only submitted information pertaining to the specified incident. Thus, to the extent any additional information responsive to the request for call sheets pertaining to the specified address, the requestor, and the named individual existed and was maintained by the city on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if

¹Section 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.

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of the Family Code). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. You claim that the submitted information is subject to section 58.007. Upon review, the submitted information pertains to an assault and the listed arrestee is not a juvenile. Although the submitted information contains references to juvenile delinquent conduct, we conclude the submitted information does not consist of law enforcement records and files concerning a juvenile offender. Therefore, the submitted information is not confidential under section 58.007(c) and may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649*

(1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You inform us the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You assert the telephone number you have marked in the submitted information was provided by a 9-1-1 service supplier. Based on your representations, we conclude the city must withhold the telephone number you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses information protected by other statutes, such chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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 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. 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. Accordingly, the city must withhold the CHRI that we have marked in the remaining information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

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. *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 prongs of this test must be established. *See id.* at 681-82. The type of information considered intimate and 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 also 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, and is generally not of legitimate concern to the public. *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). Further, this office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Upon review, we find that some of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note you have redacted some information under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).² 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[.]" Gov't Code § 552.130(a)(1)-(2). We note you have redacted Texas motor vehicle record information pertaining to the requestor. Because section 552.130 protects privacy interests, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 and it may not be withheld from him under section 552.130. *See* Open Records Decision No. 684 at 11-13; *see also* Gov't Code § 552.023(b). Upon review, however, we agree that, with the exception of the information we have marked for release, the city may withhold the remaining information you have redacted pursuant to Open Records Decision No. 684 and Open Records Letter Nos. 2006-14726 and 2007-00198, without seeking a decision from our office.³ In addition, we find the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold 1) the telephone number you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code; 2) the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; and 3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the information you have marked, as well as the additional information we have marked under section 552.130 of the Government Code. The remaining information must be released.

²*See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations).

³We 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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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/eb

Ref: ID# 396355

Enc. Submitted documents

c: Requestor
(w/o enclosures)