



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 19, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-00888

Dear Ms. Middlebrooks:

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# 406881 (DPD Public Information request # 2010-10209).

The Dallas Police Department (the "department") received a request for information pertaining to a named officer. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 section encompasses information protected by other statutes, including 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.

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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(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 criminal justice purposes. *See* Gov't Code § 411.089(b)(1). The submitted information contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI; therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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 apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. We understand you to assert the emergency communication district here is subject to section 772.318, which applies to an emergency communication district for a county with a population of more than 20,000. Therefore, to the extent the originating telephone number of a 9-1-1 caller you have marked was supplied by a 9-1-1 service supplier, this information is confidential under section 772.318 of the Health and Safety Code, and the department must withhold it from disclosure under section 552.101 of the Government Code. However, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, then the department may not withhold this information under section 552.101 on that ground.

Section 552.101 also encompasses section 1703.306(a) of the Occupations Code, which provides "[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]" You assert the submitted information contains polygraph information that is confidential under section 1703.306, and the requestor does not appear to have a right of access to the information under that section. Upon review, we agree the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.² Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state

²The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). In addition, 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 individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find 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).

Some of the submitted information is intimate or embarrassing and is not of legitimate concern to the public; therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

You assert some of the submitted information is excepted under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. *Gov't Code* § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). The department must withhold

the information we have marked, as well as the remaining information you have marked, under section 552.117(a)(2).³

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by a Texas agency, a motor vehicle title or registration issued by a Texas agency, or a personal identification document issued by a Texas agency or a local agency authorized to issue an identification document. Gov't Code § 552.130(a). We agree the department must withhold the information you have marked, as well as the information we have marked, under section 552.130.⁴

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136 provides "[n]otwithstanding any other provision of [the Act], 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, we find the department must withhold the identification numbers you have marked under section 552.136 of the Government Code.

To conclude, the department must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the originating telephone number of a 9-1-1 caller you have marked under section 552.101 in conjunction with section 772.318 of the Health and Safety Code if it was supplied by a 9-1-1 service supplier; (3) the information you have marked under section 552.101 in conjunction with 1703.306 of the Occupations Code; (4) the information we have marked under section 552.102(a) of the Government Code; (5) the information we have marked under section 552.101 in conjunction with common-law privacy; and (6) the information marked under sections 552.117(a)(2), 552.130, and 552.136 of the Government Code. The department must release the remaining information.

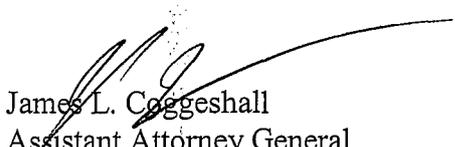
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³We note a government body may withhold a peace officer's home address and telephone number, personal cell phone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); Gov't Code § 552.147(b).

⁴We note this office 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 and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vb

Ref: ID# 406881

Enc. Submitted documents

c: Requestor
(w/o enclosures)