ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-00999

Dear Ms. Dang:

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# 406424.

The Corpus Christi Police Department (the "department") received a request for information involving a specified apartment complex and time interval. You state some of the requested information has been released. You claim other responsive information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a

population of more than 20,000. You state the City of Corpus Christi is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You have marked the information the department seeks to withhold under section 772.318. You state the marked information was furnished by a 911 service supplier. Based on your representations and our review, we conclude the city must withhold most of the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. We find the remaining information you have marked does not fall within the scope of the statute. We conclude that information, which we have marked, may not be withheld under section 552.101 on the basis of section 772.318 and must be released.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in part:

> (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); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We have marked juvenile law enforcement information the department must withhold under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Criminal history record information ("CHRI") obtained from the National Crime Information Center 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." Gov't Code § 411.082(2). We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center 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 it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). You have marked information the department seeks to withhold under section 411.083 of the Government Code. We have reviewed that information and find it does not constitute CHRI. We therefore conclude the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with federal law or subchapter F of chapter 411 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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 encompasses the specific types of information 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 other types of information 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). You have marked the information the department seeks to withhold on privacy grounds. We have reviewed the information at issue and find some of the information is not highly intimate or embarrassing and a matter of no legitimate public concern. We conclude that information, which we have marked, is not protected by common-law privacy under section 552.101 of the Government Code and must be released. Except for the information we have marked for release, we agree the department must

withhold the information you have marked under section 552.101 in conjunction with common-law privacy. We have marked additional information we find to be highly intimate or embarrassing and a matter of no legitimate public concern. The department also must withhold that information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We note this exception is not applicable to out-of-state motor vehicle record information. You have marked the information the department seeks to withhold under section 552.130. We have reviewed the information at issue and find some of the information does not fall within the scope of section 552.130. We have marked that information, which must be released. We conclude the department must withhold the remaining information you have marked and the additional Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code.[1]

In summary: (1) except for the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (2) the department must withhold the juvenile law enforcement information we have marked under section 552.101 in conjunction with section 58.007(c) of the Family Code; (3) except for the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked under section 552.101 in conjunction with common-law privacy; and (4) except for the information we have marked for release, the department must withhold the Texas motor vehicle information you have marked and the additional Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code. The department must release the rest of the submitted 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.

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

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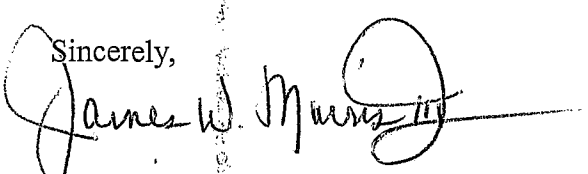
[1]We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130, without the necessity of requesting an attorney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

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 406424

Enc: Submitted documents

c: Requestor
(w/o enclosures)