



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2011-01610

Dear Mr. Noga:

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# 407591 (City of Coppell Open Records Request No. 10272).

The City of Coppell (the "city"), which you represent, received a request for a specified police report. You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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 section encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Although you raise section 261.201 for the submitted information, you have failed to demonstrate that any portion of this information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under chapter 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 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 Texas 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. The city must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 and federal law.¹

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus.*

¹We note that an individual may obtain his own CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976). The types 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. Upon review, we find a portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information, which we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. None of the remaining information at issue may be withheld under section 552.101 on this basis.

Section 552.130 of the Government Code 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). Therefore, the city must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. The city may withhold the social security numbers you have marked under section 552.147.

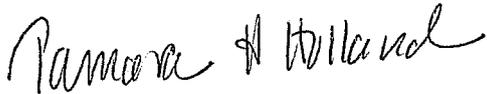
In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law and common-law privacy. The city must withhold the information marked under section 552.130 of the Government Code. The city may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.²

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.

²We note the information being released contains the requestor's social security number and Texas driver's license number. 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. Gov't Code § 552.147(b). Additionally, we note Open Records Decision No. 684 (2009) authorizes a governmental body to redact a Texas driver's license number under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. The requestor has a special right of access, however, to his own social security number and Texas driver's license number which would otherwise be confidential with regard to the general public. *See* Gov't Code § 552.023(a). Accordingly, if the city receives another request for this information from an individual other than the requestor, the city is authorized to withhold the social security number under section 552.147 and the Texas driver's license number under section 552.130 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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tf

Ref: ID# 407591

Enc. Submitted documents

c: Requestor
(w/o enclosures)