



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2011

Mr. Tyler F. Wallach  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2011-10653

Dear Mr. Wallach:

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# 424816 (Fort Worth PIR No. W008640).

The City of Fort Worth (the "city") received a request for seven categories of information regarding background checks conducted on the city's applicants for employment or current employees, excluding those of contractors and vendors. You state you have released some information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. You also assert that release of this information may implicate the proprietary interests of A-Check America, Inc. ("A-Check"). Accordingly, you inform us, and provide documentation showing, that you notified A-Check of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excluded the personally identifiable information of applicants and employees, including names, dates of birth, social security numbers, addresses, and driver's license numbers. Thus, such information is not responsive to the instant request. This ruling does not address the public availability of non-responsive information and such information need not be released in response to this request.

You seek to withhold the requested information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *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 demonstrated. *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. The doctrine of common-law privacy protects a compilation of an individual’s criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. You assert the submitted documents require the city to compile the criminal history of the applicants and employees, thus implicating their right to privacy. However, as previously noted, the requestor has specifically excluded names, dates of birth, social security numbers, addresses, and driver’s license numbers from her request. Further, we find none of the responsive information identifies the applicants and employees. Accordingly, we conclude this information does not implicate any individual’s privacy interests. Therefore, none of the submitted information is confidential under common-law privacy, and the city may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). 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.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See Open Records Decision No. 565* (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information in accordance with 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 only release CHRI to another criminal justice agency for a criminal

justice purpose. *See 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. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082 (2)(B) (definition of CHRI does not include driving record information). Upon review, we find the submitted information does not consist of CHRI generated by NCIC or TCIC; thus, the city may not withhold any portion of the responsive information under section 552.101 in conjunction with chapter 411 of the Government Code and federal law.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Upon review, we find the employees' current or former county-of-residence, which you have highlighted in green, is not subject to section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear purpose of section 552.117 is to protect public employees from being harassed at home), (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)); *see also* Attorney General Opinion GA-0572 at 4 (2007) (finding no statute making a public employee's county-of-residence information expressly public or private). Accordingly, the city may not withhold the information you have marked in green on that basis.

We next note you have redacted some information pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). In those rulings, we determined the city is allowed to withhold certain Texas driver's license numbers and motor vehicle record information under section 552.130 of the Government Code without seeking a ruling from this office. Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The responsive information contains additional information subject to section 552.130. Accordingly, the city must withhold the types of information we have marked under section 552.130 of the Government Code.

Finally, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, A-Check has not submitted comments to this office explaining why its information should not be released. We, thus, have no basis for concluding that any portion of the remaining

information constitutes proprietary information of this company. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the submitted information based on the proprietary interests of A-Check.

In summary, the city must withhold the types of information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.

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](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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 424816

Enc. Submitted documents

c: Requestor  
(w/o enclosures)