



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2011

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street Third Floor  
Fort Worth, Texas 76102

OR2011-15956

Dear Ms. Byles:

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# 434650 (PIR No. W010970).

The City of Fort Worth (the "city") received a request for information involving two street addresses, two named individuals, and specified time periods. You state some of the requested information either has been or will be released. You indicate the city has redacted driver's license and motor vehicle information under section 552.130 of the Government Code pursuant to Open Record Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).<sup>1</sup>

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<sup>1</sup>Open Records Letter Nos. 2006-14726 and 2007-00198 are previous determinations issued to the city authorizing it to withhold certain driver's license, motor vehicle, and personal identification information under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. We note, however, the Texas legislature amended section 552.130 effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superseded Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198.

You claim the rest of the requested information is excepted from disclosure under sections 552.101 and 552.108 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 the doctrine of common-law privacy, which protects information if (1) it 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 elements of the test must be established. *Id.* at 681-82. A compilation of an individual’s criminal history 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). We also find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note information relating to an offense for which an individual is currently involved in the criminal justice system does not implicate privacy concerns. *Cf. Gov’t Code § 411.081(b).*

In this instance, the requestor seeks access to unspecified police records concerning herself and another named individual. Thus, this request requires the department to compile the criminal histories of the requestor and the other named individual and thereby implicates their privacy interests. We note the requestor has a special right of access under section 552.023 of the Government Code to any information the city would be required to withhold from the public to protect the requestor’s privacy. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).<sup>2</sup> But to the extent the city maintains any information that depicts the other named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the city has submitted information that does not depict the other named individual as a suspect, arrested person, or criminal defendant. Such information is not a compilation of criminal history information and may not be withheld on that basis under section 552.101 and common-law privacy.

Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to

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<sup>2</sup>Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

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 also 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). We also have concluded personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked medical and personal financial information that is highly intimate or embarrassing and not a matter of legitimate public interest. The city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center is confidential under section 552.101 in conjunction with 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). Federal law governs the dissemination of CHRI obtained from the NCIC 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). 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). We also note a criminal justice agency may disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." *Id.* § 411.081(b). We have marked CHRI the city must

withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 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. We note the city is part of an emergency communication district established under section 772.218. You seek to withhold originating telephone numbers and addresses of 911 callers contained in the remaining information under section 552.101 in conjunction with section 772.218. In Open Records Letter No. 2011-15641 (2011), we granted a previous determination authorizing the city to withhold originating telephone numbers of 911 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 in conjunction with section 772.218. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Therefore, the city must withhold any such telephone numbers contained in the remaining information pursuant to Open Records Letter No. 2011-15641. To the extent the addresses we have marked are the originating addresses of 911 callers furnished to the city by a service supplier established in accordance with chapter 772, we conclude the city must withhold the marked addresses under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. We note an address furnished by a 911 caller is not confidential under section 772.218. *See* ORD 649 at 3 (language of confidentiality provision controls scope of its protection).

We note some of the remaining information is protected by sections 552.130 and 552.136 of the Government Code.<sup>3</sup> Section 552.130 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 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). You have marked information the city seeks to withhold under section 552.130. We conclude some of the information at issue does not fall within the scope of section 552.130 and must be released. With the exception of that information, which we have marked, we conclude the city must withhold the driver's license and motor vehicle information you have marked and the additional driver's license and motor vehicle information we have marked under section 552.130 of the Government Code.

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<sup>3</sup>This office will raise sections 552.130 and 552.136 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Section 552.136 of the Government Code provides that “[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”). This office has determined an insurance policy number is an access device for purposes of section 552.136. Therefore, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold (1) any information it maintains that depicts the other named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the medical and personal financial information we have marked under section 552.101 in conjunction with common-law privacy; (3) the CHRI we have marked under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (4) the originating telephone numbers of 911 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code pursuant to Open Records Letter No. 2011-15641; (5) the originating addresses of 911 callers furnished to the city by a service supplier established in accordance with chapter 772 under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code; (6) the driver’s license and motor vehicle information you have marked, except for the information we have marked for release, and the additional driver’s license and motor vehicle information we have marked under section 552.130 of the Government Code; and (7) the insurance policy number we have marked under section 552.136 of the Government Code.<sup>4</sup> The city must release the rest of the submitted information. As we are able to make these determinations, we need not address the other exception you claim.

Additionally, we have decided to grant the city another previous determination. This letter ruling shall serve as a previous determination under section 552.301(a) of the Government Code that the city must withhold, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, an originating address of a 911 caller furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. Thus, so long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8.

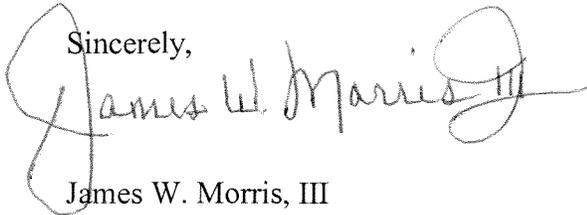
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>4</sup>We note the remaining information includes social security numbers. 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.

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 "James W. Morris, III". The signature is written in black ink and is positioned above the typed name.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 434650

Enc: Submitted documents

c: Requestor  
(w/o enclosures)