



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

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

OR2011-17204

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# 436607 (City of Fort Worth P.I.R. No. W001138).

The City of Fort Worth (the "city") received a request for all call sheets, police reports, and 9-1-1 reports for a specified address during a specified time period. You state the city is releasing some of the responsive information. You claim portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You also state you have redacted certain

¹Section 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).

driver's license and motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). 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, 82nd 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, 82nd 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, the city 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. Furthermore, you do not assert, nor do our records indicate, that the city is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See Gov't Code § 552.301(a); ORD 673 (previous determinations).* As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the city should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to section 552.147(b) of the Government Code. *See Gov't Code §§ 552.301(e)(1)(D), .302.* Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Next, you seek to withhold originating telephone numbers and addresses of 9-1-1 callers contained in the submitted 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 9-1-1 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 ORD 673 at 7-8.* Furthermore, in Open Records Letter No. 2011-15956 (2011) we granted a previous determination authorizing the city to withhold an originating address of a 9-1-1 caller 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. Therefore, the city must withhold any such telephone numbers and addresses contained in

the submitted information pursuant to Open Records Letter Nos. 2011-15641 and 2011-15956.

Next, you claim report number 11-39692 and its corresponding incident detail report are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *Id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from the Tarrant County District Attorney’s Office stating, report number 11-39692 and its corresponding incident detail report pertain to a pending criminal prosecution. Based on these representations and our review, we find release of report number 11-39692 and its corresponding incident detail report would interfere with the prosecution of crime. We therefore conclude section 552.108(a)(1) is generally applicable to this information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not, however, except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold report number 11-39692 and its corresponding incident detail report under section 552.108(a)(1) of the Government Code.²

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. Section 552.101 encompasses confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, 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 the statutory definition of CHRI does not encompass driving record information maintained by DPS 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. The remaining information at issue may not be withheld under section 552.101 on this basis.

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 the test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information that are 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps)*. 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 information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1), (2)). Upon review, we find the city must withhold the information you have redacted, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, the city must withhold (1) the originating telephone numbers and addresses of 9-1-1 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 Nos. 2011-15641 and 2011-15956; (2) the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (3) the medical and personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information you have redacted, as well as the additional information we have marked, under section 552.130 of the Government Code. The city 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 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 436607

Enc. Submitted documents

c: Requestor
(w/o enclosures)