



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2011

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

OR2011-17754

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# 438298 (PIR# W011853).

The City of Fort Worth (the "city") received a request for information related to call number 1107565657. 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).¹ You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Open 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 Thus, the statutory amendments to section 552.130 of the Government Code superseded Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011.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, 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.

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 the doctrine of common-law privacy, which protects information that (1) 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. *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. *Id.* at 681-82.

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. This office has found 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). This office also has found that information that reflects an individual’s personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545(1990).

Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and the nature of certain incidents, the information must be withheld in its entirety to protect the individual’s privacy. Although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the submitted information must be withheld in its entirety on the basis of common-law privacy.

Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Thus, we determine the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is private; therefore, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

We note you seek to withhold information relating to a 9-1-1 caller. In Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011), this office issued previous determinations to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, 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 of the Government Code in conjunction with section 772.218 of the Health and Safety Code

without requesting a decision from this office.² *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You indicate the telephone number and address you have marked are the originating telephone number and address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772. As such, the city must withhold the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code in accordance with the previous determinations issued to the city in Open Records Letter Nos. 2011-15641 and 2011-15956.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center. 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 agree the city must withhold the marked CHRI under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Finally, section 552.130 of the Government Code provides information relating to a motor vehicle 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 amendments to Gov't Code § 552.130(a)(2)). The city must withhold the marked motor vehicle record information under section 552.130 of the Government Code.

In summary, the city must withhold the following: (1) the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code

²Section 552.101 of the Government Code also encompasses information other statutes make confidential.

in conjunction with common-law privacy; (2) the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code in accordance with the previous determinations issued to the city in Open Records Letter Nos. 2011-15641 and 2011-15956; (3) the information you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; and (4) the marked motor vehicle record information under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 438298

Enc. Submitted documents

c: Requestor
(w/o enclosures)