



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2011

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

OR2011-18436

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# 438930.

The City of Fort Worth (the "city") received a request for a specified police investigation file. You have redacted some information under section 552.147 of the Government Code.<sup>1</sup> You claim some of the submitted information is not subject to the Act. You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information appears to have been obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for

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<sup>1</sup>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). However, section 552.147(b) does not apply to the social security number of a deceased individual. *Id.* Therefore, the city may not withhold the social security number of the deceased individual that you have marked under section 552.147. However, the city may withhold the social security numbers of living individuals in the remaining information under section 552.147 of the Government Code.

purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent the information at issue is held by the city as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act, and we do not address its public availability. To the extent the information at issue does not consist of records of the judiciary, we will address your exceptions to disclosure.

Next, we note the submitted information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov’t Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See id.*; *see also id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. However, you also raise section 552.108 of the Government Code for the submitted information. Because information subject to section 552.022(a)(1) can be withheld under section 552.108, we will consider your argument under that exception. Further, you raise sections 552.101, 552.130, 552.136, and 552.137 of the Government Code for portions of the submitted information. Because these sections make information confidential under the Act or other law for purposes of section 552.022, we will address the applicability of these exceptions to the submitted information.

You assert portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with a court order. *See* Gov’t Code § 552.101 (excepting from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision”); *see also id.* § 552.107(2) (information is excepted from release if court by order has prohibited its disclosure). However, section 552.022(b) of the Government Code provides as follows:

A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is confidential under this chapter or other law.

*Id.* § 552.022(b). Under section 552.022(b), a court may not order a governmental body to withhold from public disclosure information encompassed by section 552.022(a) unless that information is made confidential under the Act or other law. *Id.* Therefore, because the information subject to section 552.022(a) is not confidential under the Act or other law, the court is prohibited from ordering the city to withhold this information. Thus, the city may not rely on the court order to withhold the information at issue.

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted an affidavit from the Tarrant County District Attorney’s Office (the “district attorney”) representing the information at issue pertains to a criminal prosecution that resulted in a conviction and a life sentence. The district attorney states the defendant has not exhausted all his post conviction remedies in state and federal court. Based on the affidavit, we understand you to argue the criminal prosecution at issue is still pending because the defendant still has an opportunity to appeal. However, we note a mere chance of an appeal is insufficient to demonstrate the release of the submitted information will interfere with law enforcement efforts. Thus, the city may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

Next, we note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter No. 2011-15641 (2011), this office issued a previous determination to the city authorizing the city to withhold the 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 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office. *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 state the telephone numbers you have marked are the originating telephone numbers of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772. As such, the city must withhold the marked telephone numbers in accordance with the previous determination issued to the city in Open Records Letter No. 2011-15641.

As previously noted, 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 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 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find the information you have marked, and the additional information we have marked, consists of CHRI that must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990). In addition, a compilation of an individual’s criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, information relating to routine

traffic violations is not excepted from release under common-law privacy. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, if the marked personal financial information relates only to the financial interests of a deceased individual, this information is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the DPS numbers you have marked are not motor vehicle record information for the purposes of section 552.130, and they may not be withheld on that basis. The city must withhold the motor vehicle record information relating to living individuals, which you have marked and we have marked in the submitted documents and we have indicated in the submitted photographs, under section 552.130. However, you have also marked numbers under section 552.130 identified in the documents as "SID" and ID numbers. It is unclear whether these numbers consist of information relating to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document. Accordingly, to the extent these numbers consist of numbers pertaining to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document, the city must withhold them under section 552.130. If these numbers do not consist of numbers pertaining to such a personal identification document, they may not be withheld under section 552.130.

We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); ORD 272 at 1. We have also marked motor vehicle record information of a vehicle belonging to a named deceased individual. If a living person owns an interest in the deceased individual's vehicle, the city must withhold the marked motor vehicle record information pertaining to that vehicle under section 552.130 of the Government Code. If no living person owns an interest in the vehicle at issue, the city may not withhold the marked motor vehicle record information pertaining to that vehicle under section 552.130.

Section 552.136 of the Government Code provides, “[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 also id.* § 552.136(a) (defining “access device”). We note the purpose of section 552.136 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, information that pertains solely to deceased individuals may not be withheld under section 552.136. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272 at 1. Upon review, if a living person owns an interest in the information you have marked, and the additional information we have marked, the city must withhold the marked information under section 552.136 of the Government Code. If no living person owns an interest in the information at issue, the city may not withhold the marked information under section 552.136.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless their owners affirmatively consent to their disclosure.<sup>2</sup>

In summary, to the extent the information at issue is held by the city as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act, and the city need not release such information in response to this request. The city must withhold the marked telephone numbers 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 determination issued to the city in Open Records Letter No. 2011-15641. The city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the marked personal financial information relates only to the financial interests of a deceased individual, this information is not protected by common-law privacy and may not be withheld on that basis under section 552.101. The city must withhold the motor vehicle information you have marked, and the additional information we have marked and indicated, under section 552.130 of the Government Code. To the extent the marked “SID” and ID numbers pertain to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification

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<sup>2</sup>We note Open Records Decision No. 684 (2009) authorizes all governmental bodies to withhold an e-mail address of a member of the public under section 552.137 of the Government Code without the necessity of requesting an attorney general decision.

document, the city must also withhold them under section 552.130 of the Government Code. If a living person owns an interest in the deceased individual's vehicle, the city must withhold the marked motor vehicle record information pertaining to that vehicle under section 552.130 of the Government Code. If a living person owns an interest in the information you have marked, and the additional information we have marked, the city must withhold the marked information under section 552.136 of the Government Code. The city must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless their owners affirmatively consent to their disclosure. The remaining 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 438930

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)