



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-01935

Dear Ms. Middlebrooks:

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# 448899 (DPD PIR # 2012-00230).

The Dallas Police Department (the "department") received a request for eight categories of information concerning a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

The submitted information includes the telephone numbers and addresses of 9-1-1 callers. In Open Records Letter Nos. 2011-17075 (2011) and 2011-18466 (2011), this office issued previous determinations to the department authorizing the department to withhold the originating telephone number and address, respectively, of a 9-1-1 caller furnished to the department 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

section 772.318 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). We understand the telephone numbers and addresses in the submitted information are the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772. As such, the department must withhold the telephone numbers and addresses you have marked in accordance with the previous determinations issued to the department in Open Records Letter Nos. 2011-17075 and 2011-18466.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information you have marked constitutes CHRI. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code. This section provides in relevant part:

- (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. You have marked records of the Dallas Fire-Rescue Department Emergency Medical Service that reflect the treatment of a patient by EMS personnel. We agree the marked information constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. We note, however, records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides a consent for release of EMS records must specify (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. You do not inform us the requestor has provided the department with any information indicating that an exception under section 773.092 would apply. *See id.* § 773.092. Accordingly, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except that information subject to section 773.091(g) must be released.²

Section 552.101 also encompasses section 550.065 of the Transportation Code. This section provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) of the Transportation provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this instance, the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the

²Because our ruling as to this information is dispositive, we do not address your remaining argument against its disclosure.

submitted CR-3 accident report form under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right to 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 met. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body ordinarily satisfies the first element of the common-law privacy test. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found information regarding receipt of governmental funds or debts owed to governmental entities is not excepted from public disclosure by common-law privacy), 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). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983). In addition, 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. 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, we note information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 441.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find most of the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate public interest. Thus, with the exception of the information we have marked for release, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue

pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of the information you have marked would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the marked information under section 552.108(a)(1).

Section 552.117(a)(2) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a); *see also id.* § 552.024. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information you have marked under section 552.117(a)(2).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1)-(2). Therefore, the department must withhold the information you have marked, and the additional information we have marked, under section 552.130.

In summary, the department must withhold the telephone numbers and addresses of 9-1-1 callers you have marked in accordance with the previous determinations issued to the department in Open Records Letter Nos. 2011-17075 and 2011-18466. The department must withhold under section 552.101 of the Government Code (1) the information you have marked in conjunction with chapter 411 of the Government Code; (2) the information you have marked in conjunction with section 773.091(b) of the Health and Safety Code, except the information subject to section 773.091(g) must be released; (3) the CR-3 accident report in conjunction with section 550.065(b) of the Transportation Code; and (4) with the exception of the information we have marked for release, the information you have marked and the additional information we have marked in conjunction with common-law privacy. The department may withhold the information you marked under section 552.108(a)(1). The department must also withhold the information (1) you have marked under section 552.117; (2) you have marked, and the additional information we have marked, under section 552.130; and (3) you have marked under section 552.136. 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, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 448899

Enc. Submitted documents

c: Requestor
(w/o enclosures)