



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 3, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2012-06498

Dear Mr. Bounds:

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# 452395.

The Corpus Christi Police Department (the "department") received a request for all information pertaining to a specified incident, including the complete investigation file. You state you will release some information to the requestor, with certain information redacted pursuant to Open Records Decision No. 684 (2009), Open Records Letter No. 2011-16393 (2011), and sections 552.130(c) and 552.147 of the Government Code.¹ You claim the

¹This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code and 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. Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* 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 id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Letter No. 2011-16393 (2011) is a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, the originating telephone numbers and addresses of 9-1-1 callers furnished to the department by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). 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).

submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted video recordings, which we have indicated, is not responsive to the request because it does not pertain to the specified incident. This ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release this information in response to this request.

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 information that other statutes make confidential, such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Medical records are confidential under section 159.002 of the MPA, which provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office also has concluded when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on receipt of the patient’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990).

You contend the information you have marked is confidential under the MPA. You state you have not received signed, written consent for release of this information. Upon review, we agree the information you have marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created by a physician or someone under the supervision of a physician. Therefore, this information constitutes confidential medical records and may be released only in accordance with the MPA.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). 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). 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. *See* ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. 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* 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. *See 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. 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 section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). We also note because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Upon review, we find the Federal Bureau of Investigation (“FBI”) numbers we have marked constitute CHRI generated by the FBI which must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, none of the remaining information constitutes CHRI under chapter 411 and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 143.090 of the Local Government Code. You state the City of Corpus Christi is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You indicate the submitted information includes photographs of police officers. You inform us none of the police officers depicted in the information at issue have provided the department with written consent regarding the release of the photographs. You further inform us none of the exceptions under section 143.090 are applicable. Therefore, the department must withhold photograph numbers B2431701-711, B2431719-722, B2431724-726, B2431732-740, B2431742-745, B2431752-753, and B2431871 under section 552.101 in conjunction with section 143.090 of the Local Government Code. We note the remaining information includes video recordings which contain visual images of city police officers. However, the legislative history for section 143.090 indicates the legislature did not intend to extend the statute's protection to video recordings. Hearings on H.B. 2006 Before the House Comm. on Urban Affairs, 82nd Leg., R.S. (March 30, 2011) (bill's author, Rep. Bonnen, explained statute's protection limited to photographs and does not protect video). Further, the remaining photographs do not depict an officer. Thus, we find the remaining information either does not depict police officers or does not consist of photographs and may not be withheld under section 552.101 in conjunction with section 143.090 of the Local Government Code.

Section 552.101 of the Government Code also 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). This office also has found personal financial information not relating to

a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked is highly intimate or embarrassing and a matter of no legitimate public concern. Therefore, the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. We note two individuals whose motor vehicle record information is at issue are deceased. The purpose of section 552.130 is to protect the privacy interests of individuals and the right of privacy lapses at death. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Some of this information relates to vehicles that were owned by these deceased individuals. Accordingly, the information that pertains to the deceased individuals' vehicles must be withheld under section 552.130 if a living person owns an interest in the vehicles at issue. If no living person owns an interest in the vehicles, then the information relating to these vehicles may not be withheld under section 552.130. You state the department does not have the technical capability to redact the information subject to section 552.130 in the submitted photographs and video recordings. We note, however, the photographs may be printed out, which would make it possible for the department to redact the information at issue by marking out the information on the printed photographs. Thus, the department must only withhold the discernable license plate numbers in photograph numbers B2431723, B2431728-730, B2431741, B2431749-751, B2431754-756, B2431759, B2431761-763, B2431777-778, B2431783, B2431795, and B2431858-862 and the vehicle identification numbers in photograph numbers B2431882-883 to the extent a living person owns an interest in the vehicles at issue. However, we also note the submitted video recording ending in 0058, which we have marked, contains Texas license plate numbers that are subject to section 552.130. Because you inform this office the department does not have the technical capability to redact this information, we conclude the department must withhold the marked video recording in its entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). Additionally, the department must withhold the remaining information we have marked that pertains to living individuals under section 552.130 of the Government Code.

In summary, the department may only release the medical records you have marked in accordance with the MPA. The department must withhold the FBI numbers we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold photograph numbers B2431701-711,

B2431719-722, B2431724-726, B2431732-740, B2431742-745, B2431752-753, and B2431871 under section 552.101 in conjunction with section 143.090 of the Local Government Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked that pertains to living individuals under section 552.130 of the Government Code. The department must withhold the discernable license plate numbers in photograph numbers B2431723, B2431728-730, B2431741, B2431749-751, B2431754-756, B2431759, B2431761-763, B2431777-778, B2431783, B2431795, and B2431858-862 and the vehicle identification numbers in photograph numbers B2431882-883 under section 552.130 of the Government Code if a living person owns an interest in the vehicle at issue. The department must withhold the marked video recording in its entirety under section 552.130 of the Government Code. The remaining information must be released.²

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

²We note the department has declined to notify the next of kin of the deceased individual depicted in the remaining information of their right to assert an interest in withholding certain information. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004) (finding surviving family members can have a privacy interest in information relating to their deceased relatives). Absent a representation from the decedent's family, we have no choice but to release the photographs of the deceased. We also note the information being released contains 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. Gov't Code § 552.147(b).

Ref: ID# 452395

Enc. Submitted documents

c: Requestor
(w/o enclosures)