



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2012

Mr. Mark G. Daniel  
Counsel for the City of Watauga  
Evans, Daniel, Moore, Evans & Lazarus  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2012-07117

Dear Mr. Daniel:

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# 453567 (Ref. No. 12-102).

The Watauga Police Department (the "department"), which you represent, received a request for all reports and call-outs for a specified restaurant during a specified period of time. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 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. 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." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act.

Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411 subch. F. 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). Thus, 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). Although you claim the information you have marked in blue constitutes CHRI, we find you have failed to demonstrate how any portion of the information at issue constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the department may not withhold any of the information at issue under section 552.101 of the Government Code on this basis.

You also seek to withhold the originating telephone numbers and addresses of 9-1-1 callers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. In Open Records Letter No. 2011-17222 (2011), we issued a previous determination authorizing the department to withhold the originating telephone numbers and addresses of 9-1-1 callers provided by a 9-1-1 service supplier under section 552.101 in conjunction with section 772.218. *See* Open Records Decision No. 673 at 7-8 (2001). You state the telephone numbers and addresses at issue were provided by a 9-1-1 service supplier. Therefore, the department must withhold the telephone numbers and addresses you have marked pursuant to Open Records Letter No. 2011-17222.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 type of information considered intimate or 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. In addition, 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). Further, this office 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 Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we agree the information you have marked in green, in addition to the information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information you have marked and we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

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. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, none of the remaining information you have marked is motor vehicle record information and none of it may be withheld under section 552.130.

Section 552.136(b) 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the insurance policy number it has marked in orange under section 552.136 of the Government Code.

In summary, the department must withhold the originating telephone numbers and addresses of the 9-1-1 callers you have marked under section 552.101 in conjunction with section 772.218 in accordance with the previous determination issued in Open Records Letter No. 2011-17222. The department must withhold the information marked in green and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and the

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument under section 552.101 in conjunction with constitutional privacy.

insurance policy number you have marked in orange under section 552.136 of the Government Code. 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 453567

Enc. Submitted documents

c: Requestor  
(w/o enclosures)