



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2012

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2012-07367

Dear Mr. Cumbie:

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# 453977 (FW Request No. W015153-022812).

The City of Fort Worth (the "city") received a request for all records for the past two years regarding a specified individual. You have marked for redaction motor vehicle information in accordance with section 552.130(c) and previous determinations issued to the city,¹ social security numbers in accordance with section 552.147 of the Government Code,² e-mail addresses of a member of the public pursuant to Open Records Decision No. 684 (2009),³

¹Section 552.130 permits a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. *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). Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006) are previous determinations authorizing the city to withhold certain information subject to section 552.130 of the Government Code without the necessity of requesting an attorney general decision.

²Section 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).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including 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 opinion.

and the telephone numbers of 9-1-1 callers pursuant to a previous determination issued to the city.⁴ You claim portions of the remaining information are excepted from disclosure under section 552.101 of the Government Code.⁵ We have considered the exception 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 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 type of information considered highly 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. 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 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) (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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

The present request requires, in part, the city to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual’s right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with

⁴Open Records Letter No. 2011-15641 (2011) is a previous determination 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.

⁵Although you raise section 552.108 of the Government Code, you have not submitted arguments in support of this exception; therefore, we assume you have withdrawn it. *See* Gov’t Code §§ 552.301, .302.

common-law privacy. We note, however, that you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate the named individual's right to privacy. Nevertheless, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also 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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National 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 in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement with the criminal justice system). Upon review, we find the information we have marked constitutes confidential CHRI, which the city must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, we find none of the remaining information you have marked constitutes confidential CHRI under federal law and chapter 411 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

The remaining submitted information contains originating telephone numbers of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code. As previously noted, in Open Records Letter No. 2011-15641 (2011) this office issued previous a determination authorizing the city to withhold the originating telephone numbers of 9-1-1 callers furnished 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 id.* § 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). Accordingly, the city must withhold the telephone numbers we have marked 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 in Open Records Letter No. 2011-15641.

You also have marked information in the remaining information under section 552.130 of the Government Code, which 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 city must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, 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.”⁶ *Id.* § 552.136. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Upon review, we find the submitted information contains an account number which the city must withhold under section 552.136 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the confidential CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (3) the telephone numbers we have marked 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 in Open Records Letter No. 2011-15641; (4) the motor vehicle record information you have marked, in addition to the information we have marked, under

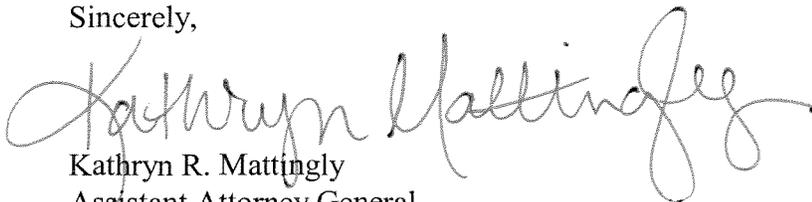
⁶The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 of the Government Code; and (5) the account number we have marked under section 552.136. The remaining information must be released.⁷

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 453977

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁷We note the submitted information contains information to which the requestor has a right of access. See Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.