ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-07573

Dear Ms. Graham:

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# 454268.

The Mesquite Police Department (the "department") received a request for the incident report and 9-1-1 call information pertaining to a specified incident. You state some information will be released to the requestor. You also state the department will redact some information pursuant to Open Records Letter Nos. 2012-01375 (2012), 2011-15761 (2011), and 2011-15075 (2011)[1], as well as motor vehicle record information pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009)[2],

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[1]Open Records Letter No. 2012-01375 is a previous determination issued to the department authorizing the department to withhold information in a call sheet that reveals the existence of a motor vehicle lien under section 552.101 in conjunction with common-law privacy, without requesting a decision from this office. Open Records Letter Nos. 2011-15761 and 2011-15075 are previous determinations to the department authorizing the department to withhold the originating addresses and telephone numbers, respectively, of 9-1-1 callers 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 section 772.118 of the Health and Safety Code without requesting a decision from this office.

[2]The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) 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 Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision.

and social security numbers pursuant to section 552.147 of the Government Code.[3] You claim portions of the submitted information are 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 this office recently issued Open Records Letter No. 2012-07334 (2012), a previous determination authorizing the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, when requests for such numbers are not made by individuals or entities who are authorized to obtain them under chapter 411 of the Government Code. Therefore, pursuant to Open Records Letter No. 2012-07334, the FBI number you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government 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).

Next, we note a portion of the submitted information is subject to a previous ruling issued by this office in Open Records Letter No. 2012-01879 (2012). In that ruling, we held, in part, that the department must withhold a portion of the information at issue under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. As we have no indication that the law, facts, or circumstances on which this prior ruling was based have changed, the department must continue to rely on this ruling as a previous determination and withhold or release the information subject to the prior ruling in accordance with that ruling. *See* ORD 673 (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, a portion of the submitted information was not subject to the prior ruling; thus we will address your arguments against its disclosure.

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

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[3]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. *See id.* § 552.147(b).

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 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. Upon review, we find the department must withhold the information you have marked under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. *Id.* § 552.130(a). We agree the department must withhold the motor vehicle information you have marked in the incident recall report under section 552.130 of the Government Code. However, you have also marked a number in the arrest report under section 552.130 identified in the document as "SID" and which you refer to as a Texas-issued personal identification number. This number does not 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 for purposes of section 552.130, and it may not be withheld under section 552.130.

In summary, pursuant to Open Records Letter No. 2012-07334, the department must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must continue to rely on Open Records Letter No. 2012-1879 as a previous determination and withhold or release the requested information we previously ruled on in accordance with that prior ruling. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law, and the motor vehicle information you have marked in the incident recall report under section 552.130 of the Government Code. The department must release the remaining information.

You ask this office to issue a previous determination that would permit the department to withhold information pertaining to a motor vehicle registration under section 552.130(a)(2) of the Government Code, without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,

Cynthia G Tynan

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 454268

Enc. Submitted documents

c: Requestor
(w/o enclosures)