



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2012

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-09384

Dear Ms. Kretz:

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# 456452 (City PIR# W015987).

The City of Fort Worth (the "city") received a request for information pertaining to a specified cab company and a named cab driver. You state the city has redacted social security numbers under section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. Additionally, you state release of the requested information may implicate the proprietary interests of Irving Holdings, Inc. d/b/a Yellow Cab ("Yellow Cab"). Accordingly, you have notified Yellow Cab of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third parties to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹Section 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. *See* Gov't Code § 552.147(b).

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Yellow Cab explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any of the information at issue would implicate the interests of Yellow Cab. *See id.* § 552.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that the city may not withhold any of the information on the basis of any interest Yellow Cab may have in the 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 information made confidential by other statutes, such as section 1304(b) of title 8 of the United States Code. Section 1304(b) addresses the confidentiality of the registration documentation of aliens under section 1301 of the United States Code and provides:

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

- (1) pursuant to section 1357(f)(2) of this title, and
- (2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). Permanent resident cards are listed in section 264.1(b) of title 8 of the Code of Federal Regulations as documents that constitute evidence of registration. 8 C.F.R. § 264.1(b). We, therefore, conclude the submitted permanent resident card, which we have marked, is a registration record subject to the confidentiality provision of section 1304(b) of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.²

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

²As our ruling is dispositive, we need not address your arguments against disclosure for this information.

(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(b), (c). Information subject to the MPA includes both medical records and information obtained from these medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined that 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 (1988), 370 (1983), 343 (1982). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). You seek to withhold a portion of the submitted information under the MPA. Upon review, we find you have not established the information at issue consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician. Thus, you have failed to establish the information at issue is confidential under the MPA, and the city may not withhold it from release on that ground.

Section 552.101 of the Government Code also encompasses section 411.083 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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information in accordance with 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 only release CHRI 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. Similarly, 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 portions of the submitted information, which we have marked, constitute CHRI. Thus, the marked CHRI must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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. This office has found that 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).* Upon review, we find a portion of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov't Code § 552.130(a)(1)-(2).* We agree the city must withhold the driver's license and motor vehicle information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

You state the city will redact the information you have marked pursuant to section 552.136(c) of the Government Code. We note section 552.136(c) allows a governmental body to redact information that must be withheld under section 552.136(b) without requesting a decision from the attorney general. *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 552.136(b) provides "[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." *Id.* § 552.136(b). We note check numbers are not access device numbers for purposes of section 552.136. Accordingly, the city may not withhold the check numbers it has marked under section 552.136. Further, we find the city has failed to demonstrate some of the other information it has marked constitutes an access device number for purposes of section 552.136. Therefore, the city may not withhold this information, which we have marked for release, under section 552.136. However, we find the remaining information you have marked is subject to section 552.136. Accordingly, except for the information we have marked for release, the city must withhold the information you have marked under section 552.136 of the Government Code.

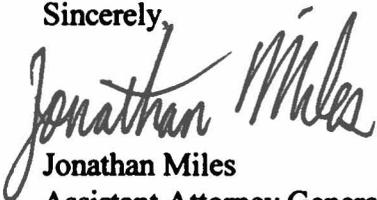
In summary, the city must withhold the marked permanent resident card under section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code. The CHRI we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The

city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the driver's license and motor vehicle information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. Except for the information we have marked for release, the city must withhold the information you have marked 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 456452

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jackie D. Bewley
Irving Holdings, Inc. dba Yellow Cab
2200 South Riverside Drive
Fort Worth, Texas 76104
(w/o enclosures)