



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-09874

Dear Ms. Byles:

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# 457157 (W016092).

The City of Fort Worth (the "city") received a request for two police reports filed by the requestor in 2012, all police reports on a named individual from 1998 through 2012, and the requestor's criminal history. You state the city is releasing some of the requested information. You also state the city will redact information under sections 552.130(a)(1) and (a)(3) of the Government Code for individuals other than the requestor and social security numbers of individuals other than the requestor under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Section 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). Gov't Code § 552.130(c); *see also 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). 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. *Id.* § 552.147(b).

Initially, we note you have submitted report numbers 09-13184, 10-63014, 10-76549, 10-82035, 10-82204, 10-122135, 11-17593, and 11-54288, which do not involve the named individual, do not list requestor as a suspect or arrestee, and are not reports made in 2012 by the requestor. As such, this information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

Next, we note that the city has redacted portions of the responsive information other than the information you state the city will redact under sections 552.130(c) and 552.147(b) of the Government Code. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that the city is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the city should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

You contend the present request requires the city to compile unspecified law enforcement records concerning the named individual and concerning the requestor, thus implicating the named individual's and the requestor's rights to privacy. However, the requestor has a right of access to information implicating his own privacy interests; thus, the city may not withhold report number 10-75466 on this basis. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Nonetheless, we find the portion of request seeking information pertaining to the named individual who is not the requestor implicates this individual's right to privacy. However, the request also seeks two specific reports made by the requestor in 2012. The portion of the request seeking specific reports does not implicate the named individual's privacy interests, and information responsive to this portion of the request may not be withheld as a criminal history compilation. You have submitted report number 12-23801, which is a 2012 report made by the requestor; thus, this report may not be withheld as part of a criminal history compilation. To the extent the city maintains law enforcement records other than report number 12-23801 depicting the named individual who is not the requestor as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy. We also note you have submitted report numbers 09-73453, 10-78235, and 10-124732, which do not depict the named individual as a suspect, arrestee, or criminal defendant. Thus, this information may not be withheld under section 552.101 as a criminal history compilation. Therefore, we will address your arguments against the disclosure of this information, as well as your arguments against disclosure of report numbers 10-75466 and 12-23801.

You have marked portions of report numbers 09-73453, 10-78235, and 10-124732 as information subject to common-law privacy. 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 some of the information you have marked is not highly intimate or embarrassing and of no legitimate public concern. Therefore, the city may not withhold this information, which we have marked for release, under section 552.101 in conjunction with common-law privacy. We find the remaining information you have marked, and additional information we have marked for withholding, is highly intimate or embarrassing and not of legitimate public concern. Therefore, with the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked for withholding under section 552.101 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). 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. 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 conclude the city must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.² However, none of the remaining responsive information constitutes confidential CHRI for the purposes of chapter 411. As such, the city may not withhold any of the remaining responsive information under section 552.101 on this basis.

In summary, to the extent the city maintains law enforcement records other than report number 12-23801 depicting the named individual who is not the requestor 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 common-law privacy. With the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked for withholding under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The city must release the remaining responsive information.³

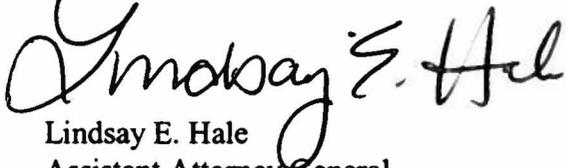
²We note that an individual may obtain his own CHRI from DPS. *See* Gov’t Code § 411.083(b)(3).

³Because the requestor has a right of access under section 552.023 of the Government Code to some of the responsive information being released, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office. *See* Gov’t Code § 552.023(a); ORD 481 at 4.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 457157

Enc. Submitted documents

c: Requestor
(w/o enclosures)