



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2012

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

OR2012-10070

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# 457575 (PIR Nos. W016158 and W016202).

The City of Fort Worth (the "city") received two requests for information pertaining to the death of a named individual. You state you have released some information to the requestors. You inform us the city will redact portions of the submitted information relating to a 9-1-1 caller pursuant to Open Records Letter No. 2011-15641 (2011).¹ We note the city has marked social security numbers for redaction pursuant to section 552.147 of the Government Code.² You claim some of the submitted information is excepted from

¹Open Records Letter No. 2011-15641 is a previous determination issued to the city 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.

²Section 552.147(b) 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).

disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code.³ 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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). 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). Upon review, we find none of the information you have marked constitutes confidential CHRI and the city may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or

³Although you raise section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code, which pertains to the confidentiality of information contained in a municipal or county registry of dogs and cats, you have submitted no arguments in support of this argument. Thus, we assume you no longer assert any of the submitted information is excepted pursuant to section 826.0311 of the Health and Safety Code. *See* Gov’t Code §§ 552.301, .302. Further, we understand you to raise section 552.117 of the Government Code based on your markings in the submitted information.

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. Upon review, we find photographs submitted as pages 48 through 70 and 98 through 116 constitute photographs and x-rays of a decedent's body taken during an autopsy. The remaining photographs are not a photographs of a body taken during an autopsy and may not be withheld under section 552.101 in conjunction with section 11 of article 49.25. We note, however, autopsy photographs are subject to public disclosure under the Act if the person depicted in the autopsy photographs died while in the custody of law enforcement. We are unable to discern from the submitted documents whether the deceased individual died while in the custody of law enforcement. Thus, we must rule conditionally. If the deceased individual died while in custody of law enforcement, the photographs submitted as pages 48 through 70 and 98 through 116 must be released pursuant to section 11(2) of article 49.25. If the deceased individual was not in the custody of law enforcement at the time of his death, the exceptions to confidentiality in section 11 of article 49.25 are not applicable and the photographs submitted as pages 48 through 70 and 98 through 116 must be withheld under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also 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 courthouses 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). However, active warrant information, information pertaining to an individual's current involvement in the criminal justice system, and information relating to routine traffic violations does not implicate privacy concerns. *Cf. Gov't Code § 411.081(b)*. Upon review, we find you have failed to establish any of the marked information is highly intimate or embarrassing. Therefore, none of the information at issue is confidential under common-law privacy and the city may not withhold any of it under section 552.101 on that ground.

We note you seek to withhold the telephone number of a city police officer. Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. *Id.* § 552.117(a)(2). "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure. We note section 552.117 also

encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. See Open Records Decision No. 506 at 5–7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We are unable to determine whether the telephone number you have marked is a city police officer's personal home or cellular telephone number. Accordingly, if the marked telephone number is the officer's personal home or cellular telephone number, the city must withhold it under section 552.117(a)(2) of the Government Code. However, if the telephone number is a cellular telephone number, the city may only withhold it if the cellular telephone service is not paid for with city funds. If the marked telephone number is not the officer's home or cellular telephone number, or if it is the officer's cellular telephone number but its service is paid for with city funds, then the city may not withhold the marked telephone number under section 552.117(a)(2).

You state the city has redacted driver's license numbers pursuant to section 552.130(c) of the Government Code, which allows a governmental body to redact the information described in subsection 552.130(a)(1) of the Government Code without the necessity of seeking a decision from this office under the Act. Gov't Code § 552.130(c). Section 552.130 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. *Id.* § 552.130(a)(1), (2). However, section 552.130 protects privacy, which is a personal right that lapses at death. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Thus, section 552.130 is not applicable to the deceased individual's driver's license number, which we have marked for release, and the city may not withhold it under section 552.130. However, we find the city must withhold the remaining driver's license numbers you have marked, the motor vehicle record information you have marked and we have marked, and any discernable license plate numbers in the submitted videos under section 552.130.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address you have marked is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address you have marked under section 552.137 unless the owner of the e-mail address affirmatively consents to its release.⁴

⁴We note Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, if the deceased individual died while in custody of law enforcement, the photographs submitted as pages 48 through 70 and 98 through 116 must be released pursuant to section 11(2) of article 49.25.⁵ If the deceased individual was not in the custody of law enforcement at the time of his death, the photographs submitted as pages 48 through 70 and 98 through 116 must be withheld under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. Except for the deceased individual's driver's license number, the city must withhold the marked information and the license plate numbers in the submitted videos under section 552.130 of the Government Code. The city must withhold the marked e-mail address under section 552.137 of the Government Code unless its owner affirmatively consents to its release. If the marked telephone number is the personal home or cellular telephone number of a city police officer, the city must withhold it under section 552.117(a)(2) of the Government Code; however, if the telephone number is a cellular telephone number, the city may only withhold it if the cellular telephone service is not paid for with city funds. The remaining information must be released to the requestors.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

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⁵In that event, the requestors have a right of access to the photographs being released that may be confidential with respect to the general public pursuant to the requestors' rights under the doctrine of constitutional privacy. See *Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004) (surviving family members can have privacy interest in information relating to deceased relatives). Thus, if the city receives another request for this particular information from different requestors, then the city should again seek a decision from this office.

Ref: ID# 457575

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)