



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2012

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

OR2012-10370

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# 458111 (Fort Worth PIR No. W016341).

The City of Fort Worth (the "city") received a request for the call sheet pertaining to a specified incident. You inform us that the city will redact portions of the submitted information relating to a 9-1-1 caller pursuant to Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. 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 information protected by other statutes, such as section 552.101 of the Government Code, which makes criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information

¹Open Records Letter Nos. 2011-15641 and 2011-15956 are previous determinations issued to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, 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.

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.” *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. We note section 411.083 does not apply to active warrant information or other information relating to one’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 criminal justice system). Upon review, we find portions of the submitted information, which we have marked, constitute 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 you have not demonstrated how the remaining information you seek to withhold consists of CHRI for purposes of chapter 411 of the Government Code. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the common-law right of 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 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. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from

severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find a portion of the submitted 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. However, we find you have failed to demonstrate the remaining information you seek to withhold is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

You state the city will withhold certain Texas motor vehicle record information under section 552.130(a)(2) of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and certain other motor vehicle information under section 553.130(a)(1) of the Government Code pursuant to section 552.130(c) of the Government Code.² Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

You state a portion of the remaining information is subject to section 552.136 of the Government Code, which states “[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. This office has determined an insurance policy number is an access device for purposes of section 552.136.

²Open Records Letter No. 2006-14726 authorizes the city to withhold, among other information, a Texas license plate number and a Texas license year of a motor vehicle under section 552.130(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. Open Records Letter No. 2007-00198 authorizes the city to withhold, among other information, vehicle identification numbers relating to a title or registration issued by an agency of the State of Texas in which a living individual owns an interest under section 552.130(a)(2), without the necessity of requesting an attorney general decision. Section 552.130(c) of the Government Code authorizes a governmental body to redact from the requested information it discloses, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state, or another state or country. *See* Gov't Code § 552.130(c) (governmental body may redact information described by subsection 552.130(a)(1) from any information the governmental body discloses without necessity of requesting decision from attorney general); *see id.* § 552.130(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general); *see also id.* § 552.130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor).

Accordingly, we find the city must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the city must withhold the information we have marked under section 411.083 of the Government Code, and the information we have marked under common-law privacy. The city must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The city must withhold the information you have marked under section 552.136 of the Government Code. The city must release the remaining information.

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
Assistant Attorney General
Open Records Division

CGT/ag

Ref: ID# 458111

Enc. Submitted documents

c: Requestor
(w/o enclosures)