



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2012

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

OR2012-12257

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# 461051 (W017151).

The City of Fort Worth (the "city") received a request for information pertaining to the arrest of the requestor's client, Use of Force policies, and taser download reports. You state some information is being released to the requestor. You state the city will redact information from the submitted documents pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You also state the city will redact social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (3) without the necessity of requesting a decision from this office. See 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 notice to requestor).

<sup>2</sup>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 Gov't Code § 552.147(b).

sections 552.101, 552.103, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, part of which is a representative sample.<sup>3</sup>

Initially, we note the submitted information consists of a completed investigation that is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless it is excepted from disclosure under section 552.108 of the Government Code or is confidential under the Act or other law. Gov’t Code § 552.022(a)(1). You raise section 552.103 of the Government Code, which is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). Therefore, the city may not withhold the submitted information under section 552.103. However, we will address your arguments under sections 552.101 and 552.137 of the Government Code because these sections make information confidential under the Act.

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 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). Upon review, we find some of the information you have marked constitutes confidential CHRI. However, the remaining information you seek to withhold does not constitute CHRI and may not be withheld under section 552.101 in conjunction on that basis. Accordingly, with the exception of the information we have

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<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

marked for release, the city 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.

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). *Id.* § 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 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.<sup>4</sup>

In summary, except for the information we have marked for release, the city 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. The city must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The city must release the remaining information.<sup>5</sup>

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](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

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<sup>4</sup>We note Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold some 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.

<sup>5</sup>We note some of the information being released contains information to which the requestor has a right of access. See Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to information held by governmental body that relates to person and that 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). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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, appearing to read 'Ana Carolina Vieira', with a horizontal line extending to the right.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 461051

Enc. Submitted documents

c: Requestor  
(w/o enclosures)