



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2012

Ms. Michelle M. Kretz
Mr. Stephen A. Cumbie
Assistant City Attorneys
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-13793

Dear Ms. Kretz and Mr. Cumbie:

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# 463684 (PIR Nos. W017862, W018164).

The City of Fort Worth (the "city") received two requests from the same requestor for (1) information related to two specified incidents, and (2) all police reports on a named individual at three addresses that were made by the requestor for a specified time frame. You state some information has been released to the requestor. You also state the city will redact information relating to a 9-1-1 caller pursuant to the previous determinations issued to the city.¹ You inform us the city will redact a social security number, other than the requestor's, under section 552.147 of the Government Code.² You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your claims.

¹Open Records Letter Nos. 2011-15956 (2011) and 2011-15641 (2011) 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. See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We note you have marked only a caller's telephone number in the submitted records.

²Section 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. Gov't Code § 552.147(b).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *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) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

You assert the present request requires the city to compile unspecified law enforcement records concerning a named individual, other than the requestor, and thus implicates this individual’s right to privacy. However, after reviewing the request and the submitted information, we find the requestor is seeking, in part, two specific reports and other specific domestic violence reports involving the requestor and the named individual. This portion of the request does not implicate the named individual’s right to privacy. Accordingly, the specifically requested reports and the domestic violence reports involving the named individual and the requestor may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation.³ However, to the extent the city maintains other law enforcement records depicting the named individual 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 as a criminal history compilation. We will address your remaining arguments against disclosure of the submitted specifically requested report and the domestic violence reports involving the named individual and the requestor.

Common-law privacy also protects the type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. *Indus. Found.*, 540 S.W.2d at 683. This office has found some kinds of personal financial information are excepted from required public disclosure under common-law privacy. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body.

³We understand the city has released one of the specifically requested reports.

See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. You state you will redact motor vehicle record information as permitted by section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).⁴ However, we note any other information made confidential by section 552.130(a)(2) is not subject to section 552.130(c) or Open Records Decision No. 684 and therefore may not be withheld without requesting a decision from this office. Accordingly, except for the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code.

We note the remaining information contains an insurance policy number. Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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."⁵ Gov't Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

⁴Section 552.130(c) 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). *See id.* § 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. *See* ORD 684.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, other than the specifically requested reports and the domestic violence reports involving the named individual and the requestor, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation. The city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The remaining information must be released.⁶

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

Ref: ID# 463684

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶We note this requestor has a right of access to information the city would be required to withhold from the general public. Should the city receive another request for this same information from a different requestor, the city should resubmit this information and request another decision. See Gov't Code §§ 552.301(a), .302.