



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 27, 2012

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2012-15431

Dear Ms. Graham:

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# 468778.

The Mesquite Police Department (the "department") received a request for all information pertaining to the requestor and a named individual, including three specified report numbers, for a specified time period. You state the department has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 of the Local Government Code, provides:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;

(3) the photograph is introduced as evidence in a judicial proceeding;  
or

(4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state some of the submitted information consists of photographs of police officers. You do not indicate the police officers depicted in the submitted photographs have provided the department with written consent regarding the release of the photographs. You do not inform us, and it does not appear, that any of the exceptions to withholding a photograph under section 143.090 are applicable. Therefore, the department must withhold the photographs depicting police officers you have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code.

Section 552.101 of the Government Code also encompasses federal and state laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or 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). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). We understand the information you marked to be CHRI the department obtained from the National Crime Information Center or the Texas Crime Information Center. Thus, we agree the department must withhold the marked information from disclosure under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and redact Texas license plate numbers from the

requested information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *Id.* § 552.130(a)(1)-(2). We note the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the department must withhold the motor vehicle record information you have marked in the submitted documents, as well as the license plate numbers you and we have indicated in the remaining photographs, under section 552.130 of the Government Code.<sup>2</sup>

In summary, the department must withhold the photographs depicting police officers you have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The department must withhold the information you have marked from disclosure under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must withhold the motor vehicle record information you have marked in the submitted documents, as well as the license plate numbers you and we have indicated in the remaining photographs, under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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<sup>1</sup>The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>We note the information being released contains the requestor's driver's license number, which is generally confidential under section 552.130 of the Government Code and social security number, which may generally be withheld under section 552.147 of the Government Code. However, because sections 552.130 and 552.147 protect personal privacy, the requestor has a right to her own information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *Gov't Code* § 552.130(c). Additionally, we note 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). Thus, if the department receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) of the Government Code authorize the department to redact the driver's license number and social security number, respectively.

You ask this office to issue a previous determination that would permit the department to withhold, without the necessity of requesting a decision from this office, (1) CHRI under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law and (2) information pertaining to a motor vehicle registration under section 552.130(a)(2) of the Government Code. We decline to issue either previous determination at this time. Accordingly, this letter ruling is limited to the particular information at issue in these requests 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 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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 468778

Enc. Submitted documents

c: Requestor  
(w/o enclosures)