



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2012

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

OR2012-16746

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# 468349 (City of Fort Worth PIR No. W019053).

The City of Fort Worth (the "city") received a request for all 9-1-1 telephone calls and police reports pertaining to a specified address. You state you have released some information to the requestor. You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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 met. *Id.* at 681-82. The types of information considered intimate and 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. *See id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the submitted information reflects the requestor knows both the nature of the incident to which the submitted information pertains and the identity of the individual involved. Therefore, withholding only the individual's identity or certain details of this incident from the requestor would generally not preserve the individual's common-law right to privacy. However, the requestor is also the step-parent of the minor child whose private information is at issue and may be acting as the authorized representative of his spouse, the parent of the minor child. As such, pursuant to section 552.023(b), the requestor may have a special right of access to the information that would ordinarily be withheld to protect the individual's privacy interest. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom the information relates on the grounds that information is considered confidential under privacy principals). Because we are unable to determine whether the requestor is the authorized representative of his spouse, we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of his spouse, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as his spouse's authorized representative, the city may not withhold the submitted information from this requestor under section 552.101 in conjunction with common-law privacy.

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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, 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. Upon review, we find the Federal Bureau of Investigation ("FBI") number, which we have marked, constitutes CHRI generated by the FBI. Accordingly, to the extent the requestor is the authorized representative of his spouse, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, if the requestor is not acting as his spouse's authorized representative, the city must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, the city must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code, and the remaining information must be released.¹

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 468349

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a special right of access to the information being released, if the city receives another request for this information from an individual other than this requestor, or the requestor's spouse, the city must again seek a decision from this office.