



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2012

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

OR2012-20083

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# 473639.

The Mesquite Police Department (the "department") received a request for incident report number LPD120423042868 and records pertaining to an incident on a specified date. You state the department will redact some information pursuant to Open Records Letter No. 2012-07334 (2012).<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 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 exception encompasses information other statutes make confidential. Section 261.201 provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>1</sup>Open Records Letter No. 2012-07334 is a previous determination issued to the department authorizing it to withhold FBI numbers under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law, without requesting a ruling from this office.

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under Chapter 522, Government Code, or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find Exhibit #2 was developed in an investigation of alleged child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code); *see also* Penal Code § 22.041(c) (defining “child” for purposes of offense of endangering a child). We note the requestor is a parent of the child victim named in Exhibit #2, and the requestor is not accused of having committed the alleged abuse or neglect. Therefore, pursuant to section 261.201(k), Exhibit #2 may not be withheld from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, before the

department provides any of this information to the requestor, the department must redact any personally identifying information about any other child victims or witnesses. *See id.* § 261.201(1)(1). Accordingly, the department must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In addition, section 261.201(1)(2) states any information that is excepted from required public disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(1)(2). Accordingly, we will address your remaining arguments against disclosure of the remaining information.

Section 552.101 of the Government Code encompasses section 411.083 of the Government Code which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") 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 NCIC network or other states. *See* 28 C.F.R. § 20.21. 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)(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 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. You state the information you have marked under section 552.101 of the Government Code was obtained by the department from the NCIC and TCIC networks. Based on your representations, we agree the marked information constitutes CHRI and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code encompasses the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The

informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state the information you have marked in Exhibit #3 identifies an individual who reported a possible violation of the law to the department, which has the authority to enforce criminal law. The submitted information does not indicate the offender knows the identity of the reporting party. Thus, we conclude the department may withhold the information you have marked under section 552.101 in conjunction with the common-law informer's privilege.

You raise section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code §§ 552.117, .024. We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. The information at issue consists of a law enforcement record of the department, and is not held by the department as an employer. Therefore, we find section 552.117 of the Government Code does not apply in this situation, and the department may not withhold any portion of the information you have marked on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]

Gov't Code § 552.130(a)(1)-(2). Upon review, we agree the department must withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code states "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The department may withhold the social security numbers you have marked and the additional social security number we have marked under section 552.147 of the Government Code.

In summary, the department must withhold under section 552.101 of the Government Code (1) the information we have marked under section 261.201 of the Family Code; and (2) the information you have marked under chapter 411 of the Government Code. The department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The department may withhold the information you have marked, and the information we have marked, under section 552.147 of the Government Code. The remaining information must be released.<sup>2</sup>

You also 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, CHRI obtained from the NCIC and TCIC databases under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. We decline to issue a previous determination at this time. Accordingly, 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 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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access, beyond right of general public, to information held by governmental body that relates to person and 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 individuals request information concerning themselves). Therefore, if the department receives another request for this information from an individual other than the requestor, the department must again seek a decision from this office.

Ref: ID# 473639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)