



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2013-02953

Dear Ms. Quinn:

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# 479337 (Reference No. 13-148).

The Cedar Park Police Department (the "department") received a request for information pertaining to two named individuals. You state you will make some information available to the requestor. You also state the department will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 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 the doctrine of common-law privacy, which protects information that (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 satisfied. *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

¹Section 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).

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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the individuals at issue. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the department has submitted call report numbers 0803-0972, 1008-4871, 1105-2197, and 1201-0849 and a CR-3 accident report form, which do not depict the named individuals as suspects, arrestees, or criminal defendants. This information does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101.

However, portions of this information are subject to common-law privacy. We note this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also 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.* 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) 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). 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. Similarly, 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. *See id.* § 411.082(2)(B) (term CHRI does not include

driving record information). Accordingly, the department must withhold the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). You inform us the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You state the department will withhold the driver's license information you have marked under section 552.130(a)(1) pursuant to section 552.130(c) of the Government Code and the license plate numbers you have marked pursuant to Open Records Decision No. 684 (2009). Section 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* 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 certain notice to requestor). 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. ORD 684. However, we note Open Records Decision No. 684 only applies to license plate numbers issued by the state of Texas. Further, the vehicle identification numbers ("VINs") you have marked are not subject to section 552.130(c) or Open Records Decision No. 684. Therefore, the remaining license plate number you have marked and the VINs you have marked may not be withheld without requesting a decision from this office. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we conclude the information you have marked and the additional information we have marked must be withheld under section 552.130.

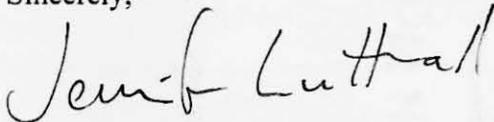
Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the department must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold (1) the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; (2) the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (3) the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (4) the information you have marked and the additional information we have marked under section 552.130 of the Government Code; and (5) the insurance policy number you have marked under section 552.136 of the Government Code. The remaining information must be released.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 479337

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²In light of our conclusion, we need not address your section 552.108 claim.