



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2013

Mr. Steven E. Meyer
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2013-05633

Dear Mr. Meyer:

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# 483524 (PD Reference Nos. 10188 and 10264).

The Arlington Police Department (the "department") received a request for the entire investigation file pertaining to a specified accident and a second request for the final narrative report, witness statements, and measurements pertaining to the accident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the second request because it consists of information beyond the final narrative report, witness statements, and measurements regarding the accident at issue. This decision does not address the public availability of information that is not responsive to the request, and the department is not required to release non-responsive information in response to the second request.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Code § 552.101. Section 552.101 of the Government Code encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by 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.” *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. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 7 (1990); *see also 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 subchapter F of chapter 411 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. *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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. We note, however, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in criminal justice system). Additionally, we note CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked in the responsive documents constitutes CHRI under chapter 411. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have failed to demonstrate any of the remaining information constitutes CHRI for the purposes of chapter 411. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code. Section 411.192 governs the release of all information maintained by DPS concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

- (a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes

the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

See id. § 411.192(a), (b). We note the remaining information responsive to the first request includes concealed handgun license information. It appears the department received this information from DPS. In this instance, the first requestor is not a criminal justice agency, nor is the requestor a license holder whose information is at issue. Further, we note section 411.193 is not applicable in this instance. *See id.* § 411.193 (making statistical report including number of licenses issued, denied, revoked, or suspended during preceding month available to public). Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states except as provided by subsection (c) or subsection (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). The submitted CR-3 accident reports were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* The requestors have 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 reports, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also 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). The type of information considered intimate or 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. *Id.* at 683. This office has found

some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found 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 we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country. Gov't Code § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining motor vehicle record information pertains to an individual who is deceased. Accordingly, the department may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.136(b) 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.”² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the department must withhold the information we have marked in the responsive documents under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 411.083 of the Government Code, (2) section 411.192 of the Government Code, (3) section 550.065(b) of the Transportation Code, and (4) common-law privacy. The department must withhold the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information we have marked under section 552.130 and section 552.136 of the Government Code. As you raise no further exceptions to disclosure, the remaining responsive information must be released.

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,

A handwritten signature in black ink, appearing to read 'Kathleen J. Santos', with a long horizontal flourish extending to the right.

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 483524

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)