



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2013

Mr. Frank J. Garza
Counsel for the City of Kyle
Davidson, Troilo, Ream & Garza
7550 IH 10 West, Suite 800
San Antonio, TX 78229-5814

OR2013-07660

Dear Mr. Garza:

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# 486698.

The City of Kyle (the "city") received a request for information pertaining to a specified traffic stop and various policies of the city's police department. You state you will release some of the responsive information, including all of the requested policies, to the requestor. 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.

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 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. 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 National Crime Information Center 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.

Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. 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 id.* § 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. We note section 411.083 does not apply to active warrant information or other information relating to an individual'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 the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Accordingly, the city must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. However, the city has failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

You state the remaining information contains motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. *Id.* § 552.130. You state the city does not have the technological capability to redact the motor vehicle record information from the submitted video recordings. We note one of the video recordings, video recording 569@20130205163223, does not contain information subject to section 552.130 and, therefore, it may not be withheld on that basis. Accordingly, with the exception of video recording 569@20130205163223, the city must withhold the submitted video recordings in their entirety under section 552.130. In addition, the city must withhold the motor vehicle record information we have indicated in the audio recordings and marked in the submitted documents under section 552.130. However, none of the remaining information is subject to section 552.130 of the Government Code, and none of it may be withheld on that basis.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 at 9-12 (1992), 545 at 4 (1990), 523 at 4 (1989), 373 at 4 (1983). This office also has found 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue the remaining information includes records that serve as a compilation of criminal history and must be withheld under common-law privacy. Upon review, we find no portion of the remaining information constitutes a compilation of an individual's criminal history. However, some of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold (1) the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (2) the submitted video recordings in their entirety with the exception of video recording 569@20130205163223, as well as the motor vehicle record information we have indicated in the audio recordings and marked in the documents under section 552.130; (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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

¹We note the information to be released contains social security numbers. Section 552.147 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. *See* Gov't Code § 552.147(b).

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 "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 486698

Enc. Submitted documents

c: Requestor
(w/o enclosures)