



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 10, 2013

Ms. Judith N. Benton  
Assistant City Attorney  
Legal Services  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2013-07806

Dear Ms. Benton:

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# 486978 (City of Waco Ref. No. LGL-13-286).

The City of Waco (the "city") received a request for information regarding a specified investigation of seven named individuals. You inform us you have released some of the requested information to the requestor. We understand you have redacted from Exhibit 3 social security numbers in accordance with section 552.147(b) of the Government Code and driver's license numbers in accordance with section 552.130(c) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under

---

<sup>1</sup>You state you will redact information in accordance with Open Records Decision No. 684 (2009). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a)(1) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684. Therefore, a governmental body may only redact information subject to subsection 552.130(a)(1) in accordance with section 552.130, not Open Records Decision No. 684. We also note section 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. *Id.* § 552.147(b).

sections 552.101, 552.130, and 552.136 of the Government Code.<sup>2</sup> 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 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 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 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. However, information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov’t Code § 441.081(b) (police department allowed to disclose information pertaining to person’s current involvement in criminal justice system).

You contend the present request requires the city to compile law enforcement records concerning one of the named individuals and thus implicates this individual’s rights to privacy. However, we find the requestor is seeking specific information regarding a specific criminal investigation. Accordingly, the request does not implicate any of the named individuals’ right to privacy, and none the submitted information may be withheld on this basis.

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. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions,

---

<sup>2</sup>Although you do not specifically raise section 552.136, we understand you to raise this exception based on your markings. Accordingly, we will address section 552.136, as this section is a mandatory exception to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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 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 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 in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with criminal justice system). Upon review, we find the information we have marked constitutes confidential CHRI, which the city must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>3</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>4</sup> However, none of the remaining information is subject to section 552.130; therefore, the city may not withhold any of the remaining information on that basis.

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup>As previously noted, section 552.130(c) of the Government Code 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). Additionally, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

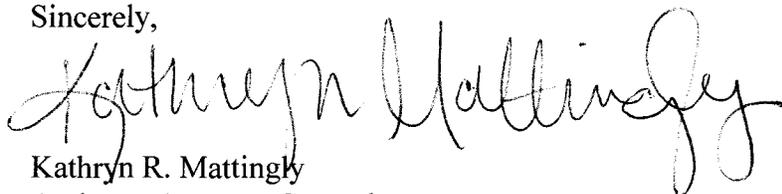
Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). We have marked a cellular telephone account number the city must withhold under section 552.136 of the Government Code. However, we find none of the remaining information you have marked consists of an access device number subject to section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, none of the remaining information may be withheld under section 552.136 of the Government Code.

In summary, the city must withhold (1) the confidential CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code, (2) the motor vehicle information we have marked under section 552.130 of the Government Code, and (3) the cellular telephone account number we have marked under section 552.136 of the Government Code. The city must release the remaining information.

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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 486978

Enc. Submitted documents

c: Requestor  
(w/o enclosures)