



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2014

Mr. Grant Jordan
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-05371

Dear Mr. Jordan:

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# 518322 (PIR Nos. W01127, W031128, and W031142).

The Fort Worth Police Department (the "department") received two requests for information pertaining to a specified incident.¹ You state you will release some information. You indicate the department will redact some information pursuant to the previous determination in Open Records Letter No. 2014-05072 (2014).² You also indicate you will redact information pursuant to the previous determinations in Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011).³ You also state you will redact

¹You inform us, and submit documentation showing, the second requestor has withdrawn his request for information.

²Open Records Letter No. 2014-05072 is a previous determination authorizing the withholding, under section 552.101 of the Government Code in conjunction with common-law privacy, a driver's license organ donor election of a living person without the necessity of requesting an attorney general decision.

³Open Records Letter No. 2011-15641 is a previous determination authorizing the withholding, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, an originating telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision. Additionally, Open Records Letter No. 2011-15956 is a previous determination authorizing the withholding, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, an originating address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision.

information pursuant to sections 552.136(c) and 552.147(b) of the Government Code.⁴ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.⁵ 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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also 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. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See* Gov't Code § 411.081(b). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). However,

⁴Section 552.136 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, access device numbers subject to section 552.136(b). *See* Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). 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).

⁵We note you have withdrawn your claim that section 552.108 of the Government Code is applicable to the submitted information. We also note the city did not comply with section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Determinations under common-law privacy must be made on a case-by-case basis. *See Open Records Decision No. 373 at 4* (1983); *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case).

Upon review, we find the photographs in Exhibit C and the information we have marked in Exhibit C1 satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the information you have marked in Exhibit C2 under common-law privacy is of legitimate public interest in the context of the subject individual’s arrest for intoxicated manslaughter. *See Lowe*, 487 F.3d at 250. Therefore, because this information is of legitimate public interest in this instance, it is not confidential under common-law privacy. Furthermore, we find the remaining information is not highly intimate or embarrassing information of no legitimate public concern and may not be withheld under section 552.101 of the Government Code on this basis.

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. Gov’t Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁶

In summary, the department must withhold the photographs in Exhibit C and the information we have marked in Exhibit C1 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department 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.texasattorneygeneral.gov/open/>

⁶We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) 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).

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to be 'Thana Hussaini', written over a circular stamp or mark.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID#518322

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)