



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2015

Ms. Ann Herrington
Law Enforcement Center
Haltom City Police Department
5110 Broadway Avenue
Haltom City, Texas 76117-3726

OR2015-14167

Dear Ms. Herrington:

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# 571279.

The Haltom City Police Department (the "department") received a request for information pertaining to specified cases involving a named individual. The department asserts it need not comply with the request to release the requested information pursuant to section 552.028 of the Government Code. In the alternative, you inform us you will redact information subject to section 552.130 of the Government Code.¹ You also claim some of the submitted information is excepted from disclosure under section 552.119 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor.² *See* Gov't Code § 552.304

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information 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 section 552.130(a) of the Government Code without the necessity of seeking a decision from the attorney general. *See id.* § 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 amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

²The requestor claims the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(d). Regardless of whether the department complied with the requirements of section 552.301(d) of the Government Code, because the exception the department claims can provide a compelling reason to overcome the presumption of openness, we will consider the department's claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

(providing that interested party may submit comments stating why information should or should not be released).

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Id § 552.028(a)-(b). You assert the department need not comply with this request pursuant to section 552.028. Upon review, however, we find you have failed to demonstrate the request for information was submitted by an individual, or an agent of an individual, who is imprisoned or confined in a correctional facility. Thus, section 552.028 is not applicable in this instance. Accordingly, we will consider your remaining argument.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). 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. *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,

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

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). 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. Upon review, we find the information we have marked constitutes CHRI the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public disclosure. *Id.* § 552.130(a)(2). The submitted video recordings in Exhibits H and I contain motor vehicle record information subject to section 552.130. You also state the department lacks the technological capability to redact information from video files. Based on this representation, we conclude the department must withhold Exhibits H and I in their entirety under section 552.130 of the Government Code.⁴ *See* Open Records Decision No. 364 (1983).

Section 552.136 of the Government Code states “Notwithstanding 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the

⁴As our ruling is dispositive, we need not address your argument against disclosure of this information.

department must withhold the information we have marked 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 section 411.083 of the Government Code and federal law. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold Exhibits H and I in their entirety under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.⁵

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/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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 571279

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the remaining information includes a social security number. 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. Gov't Code § 552.147(b).