



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 11, 2017

Mr. Christopher K. Austria  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2017-07672

Dear Mr. Austria:

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# 652821 (City PIR Nos. W058408 and W058409).

The City of Fort Worth (the "city") received two requests from the same requestor for all information involving the requestor, four additional named individuals, and a specified address during a specified time period, along with information related to a specified incident and a certificate of occupancy related to a specified address. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note Exhibit F consists of police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

(1) the date and approximate time of the recording;

- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>1</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section 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. The doctrine of common-law privacy also protects a compilation of an individual’s criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 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 assert the present requests require the city to compile unspecified law enforcement records concerning individuals. We find the part of the requests seeking records pertaining to the four named individuals generally implicates the named individuals’ rights to privacy. However, we find the requestor also seeks reports that involve himself. Therefore, information relating to the requestor does not implicate the other named individuals’ rights to privacy. Further, the requestor has a right of access to his own private information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s

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<sup>1</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We note the city has submitted information related to incidents involving the requestor and the other named individuals. Accordingly, the city may not withhold this information as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert Exhibits D, E, G, and H are subject to chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). However, you do not explain, nor do the documents reflect, the submitted information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or that the city’s police department used or developed this information in an investigation of alleged or suspected child abuse or neglect. Accordingly, we conclude this information is not within the scope of section 261.201. Therefore, the city may not withhold Exhibits D, E, G, and H under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits D, E, G, and H relate to pending criminal investigations and prosecutions. Based upon this representation

and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibits D, E, G, and H under section 552.108(a)(1) of the Government Code.

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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411, of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *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. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the FBI number we have marked consists of confidential CHRI. Accordingly, the city must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>2</sup>

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate

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<sup>2</sup>We note the requestor can obtain his own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). As noted above, the requestor has a right of access to his own private information and date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, the city must withhold the date of birth we have 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 operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own motor vehicle record information under section 552.023. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city must withhold the motor vehicle record information that does not belong to the requestor, which we have marked, under section 552.130.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note the requestor has a right of access to his own e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). The remaining e-mail address at issue is not of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body camera recordings in Exhibit F were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released to this requestor in response to these requests for information. With the exception of basic information, which must be released, the city may withhold Exhibits D, E, G, and H under section 552.108(a)(1) of the Government Code. The city must withhold: (1) the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the motor vehicle record information we have marked under section 552.130 of the Government Code; and (4) the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail

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<sup>3</sup>The 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, 480 (1987), 470 (1987).

address affirmatively consents to its disclosure. The city must release the remaining information.<sup>4</sup>

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/sdk

Ref: ID# 652821

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a special right of access to some of the information being released. Gov't Code §§ 552.023(a), .137(b); ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.