



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2018

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2018-00795

Dear Mr. Dempsey:

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# 691851 (GCA 17-0693).

The Garland Police Department (the "department") received a request for information pertaining to a specified incident. The department claims the requested information is exempted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. However, driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov't Code § 411.082(2)(B) (definition of CHRI does not include driving record information). In addition, section 411.083 does not apply to active warrant information or other information relating to one'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). We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find some of the information at issue, which we have marked, is confidential under section 411.083. Therefore, 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.<sup>1</sup> However, the remaining information does not contain CHRI for purposes of chapter 411. Accordingly, the remaining information is not confidential under chapter 411, and the department may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code excepts also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 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. *See 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.). The requestor has a right of access to his private information, including his date of birth, pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the department must withhold the submitted dates of birth of other individuals under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Other than the requestor's date of birth, the department must withhold

---


<sup>1</sup>We note individuals may obtain their own criminal record history information from DPS. *See* Gov't Code § 411.083(b)(3).

the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.<sup>2</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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tdw

Ref: ID# 691851

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.