



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 9, 2019

Ms. Ileana Fernandez  
Assistant City Attorney  
City of Mesquite  
P. O. Box 850137  
Mesquite, Texas 75185-0137

OR2019-00621

Dear Ms. Fernandez:

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# 745713.

The City of Mesquite (the "city") received a request for the pre-employment investigation report pertaining to the requestor, including the notes and recommendation of a named investigator. You state you will release some information to the requestor. You state you will redact Federal Bureau of Investigation ("FBI") numbers pursuant to Open Records Letter No. 2012-07334 (2012).<sup>1</sup> You also state you will redact public citizens' dates of birth pursuant to Open Records Letter No. 2015-24970 (2015).<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Open Records Letter No. 2012-07334 authorizes the city to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office.

<sup>2</sup>Open Records Letter No. 2015-24970 is a previous determination authorizing the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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(a). 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). 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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. The city states a portion of the submitted information, which it marked, consists of CHRI that is confidential under section 411.083. Thus, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>3</sup>

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 that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the insurance company names you have marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. Further, we note individuals may obtain their own criminal record history information from DPS. *See Gov’t Code* § 411.083(b)(3).

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. *See* Gov't Code § 552.130. Upon review, we find some of the information the city marked does not consist of motor vehicle record information for purposes of section 552.130. This information, which we have marked for release, may not be withheld on that basis. Accordingly, with the exception of the information we have marked for release, the city must withhold the motor vehicle record information it has marked and the additional information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, 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; *see also id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision 684 (2009). Accordingly, we find the city must withhold the insurance policy numbers it has marked under section 552.136 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. Upon review, we find the city may withhold the social security number it has marked under section 552.147 of the Government Code.

In summary, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the motor vehicle record information it has marked and we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy numbers it has marked under section 552.136 of the Government Code. The city may withhold the social security number it has marked under section 552.147 of the Government Code. The city must release the remaining information.<sup>4</sup>

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<sup>4</sup>We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's 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). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read 'Michelle Garza', with a long horizontal line extending to the right.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/gw

Ref: ID# 745713

Enc. Submitted documents

c: Requestor  
(w/o enclosures)