



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 7, 2019

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

OR2019-12175

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# 764182.

The Mesquite Police Department (the "department") received a request for information related to case number 18047932.<sup>1</sup> We understand the department will redact certain personal financial information pursuant to Open Records Letter Nos. 2012-06459 (2012) and 2012-01375 (2012).<sup>2</sup> The department states it is withholding certain information

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<sup>1</sup>The department informs us it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The department informs us it received the required deposit on February 20, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

<sup>2</sup>Open Records Letter No. 2012-06459 authorizes the department to withhold the price of a motor vehicle in a call sheet under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision under section 552.301 of the Government Code. Open Records Letter No. 2012-01375 authorizes the department to withhold motor vehicle lien information in a call sheet under section 552.101 in conjunction with common-law privacy without requesting a decision.

pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> The department states it is releasing some of the requested information, including the police officer's crash report pursuant to section 550.065(c) of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). The department claims the submitted information is excepted from disclosure under sections 552.101, 552.1085, 552.130, and 552.147 of the Government Code. Additionally, the department provides documentation showing it has notified an individual of the right to submit comments to this office why some of the submitted information should not be released.<sup>4</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions the department claims and reviewed the submitted information.

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." *Id.* § 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. Upon review, we agree the information the department marked consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

<sup>4</sup>As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. The department states the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;  
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. The department states the remaining information includes photographs that depict police officers. The department informs us the police officers depicted in the photographs at issue have not provided the department with written consent regarding the release of the photographs. The department further informs us none of the remaining exceptions under section 143.090 are applicable. Therefore, the department must withhold the submitted photographs of police officers, which it noted, under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code.

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. The doctrine of common-law privacy 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). 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.). Because “the right of privacy is purely personal[,]” that right “terminates upon the death of the person whose privacy is invaded[.]” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Upon review, we agree most of the information the department marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We also find some of the remaining information, which we have marked, meets that standard. However, we find the department has not demonstrated some of the information it marked is highly intimate or embarrassing and not of legitimate public concern. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we marked for release, the department must withhold the information it marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1085 of the Government Code provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia.” *See id.* § 552.1085(a)(6). The department states the some of the remaining photographs consist of

sensitive crime scene images that were taken at a crime scene as part of a criminal case that is now closed. Further, the department states none of the exceptions in section 552.1085 apply in this instance. Based on these representations and our review, we agree most of the photographs the department noted consist of sensitive crime scene images for the purposes of section 552.1085. However, we find one of the photographs at issue, which we noted, does not consist of a sensitive crime scene image for the purposes of section 552.1085, and the department may not withhold that photograph under section 552.1085(c) of the Government Code. Therefore, with the exception of the photograph we noted for release, the department must withhold the photographs it noted under section 552.1085(c) of the Government Code.

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 id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information it marked and noted and the additional motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the department may withhold the social security numbers it marked under section 552.147 of the Government Code.

In summary, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the photographs of police officers it noted under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. With the exception of the information we marked for release, the department must withhold the information it marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the photograph we noted for release, the department must withhold the photographs it noted under section 552.1085(c) of the Government Code. The department must withhold the motor vehicle record information it marked and noted and the additional motor vehicle record information we marked under section 552.130 of the Government Code. The department may withhold the social security numbers it marked under section 552.147 of the Government Code. The department must release the remaining information to this requestor.<sup>5</sup>

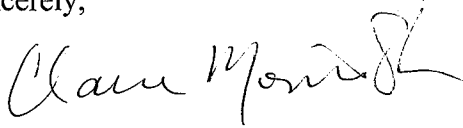
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<sup>5</sup>We note the requestor has a right of access to some of the information being released. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 764182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)