



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2019

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2019-18959

Dear Ms. Pemberton:

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# 775027 (City ID# W0028564).

The Killeen Police Department (the "department") received a request for all information involving a named individual. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim incident report number 12-008096 is excepted from disclosure; however, you have not submitted to this office a copy or representative sample of incident report number 12-008096. To the extent incident report number 12-008096 does not involve the individual named in the request for information, this report is not responsive to this request. This ruling does not address the public availability of any information that is not responsive the request, and the department need not release such information in response to this request. Conversely, to the extent incident report number 12-008096 does involve the individual named in the request for information, it is responsive. In that instance, we must address your procedural obligations under the Act with respect to incident report number 12-008096.

Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the department received the request for information on April 18, 2019. You claim incident report number 12-008096 is excepted from disclosure under section 552.108 of the Government Code. However, as noted above, as of this date, you have not submitted to this office a copy or representative sample of incident report number 12-008096. Accordingly, we conclude you failed to comply with the requirements of section 552.301 with regards to incident report number 12-008096 to the extent this report is responsive to the request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although you claim section 552.108 of the Government Code for incident report number 12-008096, we find you have failed to establish a compelling reason to address this exception. Accordingly, to the extent incident report number 12-008096 is responsive to the request for information, the department must release the report.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 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 criminal justice purposes. *See id.* §§ 411.083(b)(1), .089. The submitted information contains a Federal Bureau of Investigation (“FBI”) number that constitutes CHRI generated by the FBI. Therefore, the department 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.²

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. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The 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.). We note the requestor provided a signed authorization from the named individual. Therefore, we find the requestor has a right of access to the private information of this individual under section 552.023 of the Government Code, and you may not withhold it from him under common-law privacy. *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); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual’s privacy. Withholding only the individual’s identity or certain details of incident report number 12-009544 from this requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold incident report number 12-009544 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.³ In addition, the department must withhold the dates of birth not belonging to the named individual in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

²We note individuals may obtain their own CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

³We note, because the information at issue does not contain CHRI of the individual named in the request for information, we do not address whether the requestor, who is a representative of the Waxahachie Police Department, has a right of access to CHRI under section 411.087 of the Government Code. *See Gov’t Code* § 411.087(a)(2); *see also id.* § 411.089.

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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to the named individual's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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 to the named individual's e-mail address under section 552.137(b). *Id.* § 552.137(b). The remaining e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the department must: (1) release incident report number 12-008096 to the extent the report is responsive to the request for information; (2) 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; (3) withhold incident report number 12-009544 in its entirety, along with all public citizens' dates of birth not belonging to the named individual, under section 552.101 of the Government Code in conjunction with common-law privacy; (4) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; (5) withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (6) release the remaining information to this requestor.⁴

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.

⁴We note the requestor has a right of access to some of the information being released. *See* Gov't Code §§ 552.023(a), .137(b); ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. Further, we note the information being released includes social security numbers. 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). The requestor, however, has a right of access to the named individual's social security number. *See generally id.* § 552.023(a); ORD 481 at 4.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 775027

Enc. Submitted documents

c: Requestor
(w/o enclosures)