



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2022

Ms. Janese Dudash
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-12655

Dear Ms. Dudash:

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# 945012 (PIR NO. E001315).

The City of Fort Worth (the "city") received a request for any calls and police reports regarding a specified address and a named individual during a defined time period. The city states it will release a portion of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the requestor is a representative of the Texas Department of Family and Protective Services (the "DFPS") and understand she claims she has a right of access to the information at issue pursuant to section 261.105 of the Family Code. Section 261.105 provides, in relevant part:

- (a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the [DFPS].
- (b) The [DFPS] shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report from a law

enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

Fam. Code § 261.105(a), (b). Upon review, we find the submitted information does not involve child abuse or neglect by the named individual relating to a child to whom the individual is responsible for the care, custody, or welfare. Therefore, we find the requestor has failed to demonstrate she has a right of access to the submitted information under section 261.105 of the Family Code.

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. Section 552.101 encompasses information protected by other statutes, such as 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). CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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(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. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. However, we note 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). Upon review, we find the FBI number we marked consists of CHRI which the city must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated the remaining information at issue is confidential CHRI for purposes of chapter 411 of the Government Code, and the city may not withhold the remaining information you marked under section 552.101 of the Government Code on that basis.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.¹ See Gov't Code § 552.130. Accordingly, we find the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold the FBI number we 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 we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information.²

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.

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

² Although the requestor is a representative of DFPS, we note the information at issue does not contain CHRI for the individual named in the request. Thus, we do not address whether the requestor has a right of access to CHRI pursuant to section 411.114 of the Government Code. See Gov't Code § 411.114(a)(4)(B). Additionally, we note the information being released contains a social security number. 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. See *id.* § 552.147(b).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 945012

Enc. Submitted documents

c: Requestor
(w/o enclosures)