



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2022

Mr. Christopher Mullins
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-39276

Dear Mr. Mullins:

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# 990521 (PIR. No. E004906-091922).

The City of Fort Worth (the "city") received a request for police reports pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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). However, we find the submitted information does not involve child abuse or neglect by any individuals relating to a child to whom they are responsible for the care, custody, or welfare. Accordingly, 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 disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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). Further, 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.). Upon review, we find some of the information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you marked as well as the public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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 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). 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 E-1 or subchapter F of the Government Code. *See* Gov’t Code § 411.083. 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 E-1 or subchapter F of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find a portion of the submitted information consists of CHRI that is confidential under section 411.083. Thus, the city must withhold the FBI we marked under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure 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.¹ *See id.* § 552.130. Accordingly, 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 information you marked as well as the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city office must withhold the FBI numbers we marked under section 552.101 in conjunction with section 411.083 of the Government Code. 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.

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,

Justin H. Miller
Attorney
Open Records Division

JHM/eb

Ref: ID# 990521

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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 The information being released contains 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. *See* Gov't Code § 552.147(b).