



Offense and Call for Service Reports, Investigation Files, and Response Records

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Views expressed are those of the presenter, do not constitute legal advice and are not official opinions of the Office of the Texas Attorney General



Section 552.108

▶ **Information protected:**

- Records of a law enforcement agency or prosecutor



Hypothetical

- ▶ Scott Lang's attorney requests "all information related to a citation issued to my client on 8/22/16, including the citing officer's personnel file."
 - The Marvel Police Department maintains an offense report, citation, and the citing officer's personnel file.

#1

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-0511
Offense: Criminal Trespass
Location: 2101 Shield Circle
Date: 8/22/16
Time: 11:45 PM

COMPLAINANT

No. 01 Last: Fury First: Nick Middle:
Race: Sex: M Age: 50

SUSPECT

No. 01 Last: Lang First: Scott Middle:
Race: Sex: M Age: 32
Address: 582 Ant Avenue
Home Phone: (830) 555-8070

DETAILS OF INCIDENT

Officer Rogers responded to a call from the complainant regarding a man trespassing on his private property. Complainant stated he observed the suspect climb his property's perimeter fence and attempt to access the complainant's storage shed on his home surveillance video system. When Officer Rogers arrived at complainant's property, Lang was peering through the windows of the complainant's storage shed. Officer Rogers approached the suspect and asked for identification. Officer Rogers checked Lang's criminal history on the police department's local criminal history database. The criminal history check yielded the following: 2009 conviction for burglary. Lang has no outstanding warrants.

ACTION TAKEN

Officer Rogers issued Lang a citation for trespassing and told him to leave the property.



Hypothetical

- ▶ The department timely raises section 552.108(a)(1) and explains the requested information pertains to a pending criminal investigation. Can the department withhold the requested information under section 552.108(a)(1) as relating to a pending criminal investigation?



What You Need To Tell Us When Asserting Section 552.108(a)(1)

- ▶ The submitted information is related to a pending criminal investigation or prosecution
- ▶ Explain how the submitted information is related to the pending criminal investigation or prosecution



Hypothetical

- ▶ Marvel Police Department has an offense report, a copy of the citation and the citing officer's personnel file. Can the department withhold this information under section 552.108(a)(1)?
 - Citation – No, because Scott Lang, the cited individual has a copy, release would not interfere with the detection, investigation, or prosecution of crime.
 - Personnel File – Yes, if the department specifically explains how release of the citing officer's personnel file will interfere with the detection, investigation, or prosecution of crime.
 - Offense Report – In part . . .



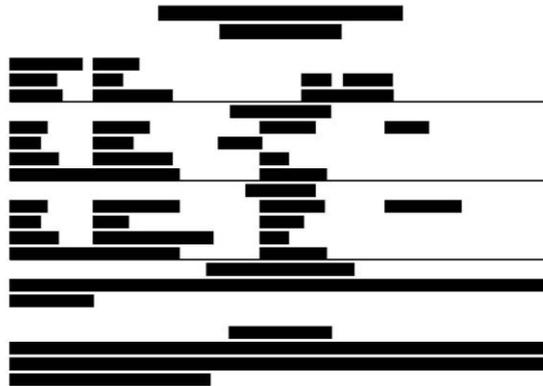
What is Basic Information?

- ▶ Basic information is the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)
- ▶ Examples of basic information from Open Records Decision No. 127 (1976):
 - Detailed description of the offense
 - Arrestee's name
 - Identification and description of the complainant



Hypothetical

- ▶ After properly raising section 552.108, the Marvel Police Department has redacted the report as follows:



- Is there anything wrong with these redactions?



What to Remember About Basic Information Under Section 552.108(c)

- ▶ Basic information does not include:
 - Motor vehicle record information
 - Victim or witness information, if the victim or witness is not the complainant
- ▶ Basic information is frequently referred to as “media” or “front page” information, but it can be located throughout offense reports or in other law enforcement records such as arrest reports, computer-aided dispatch reports, and blotters
- ▶ Basic information is not released from photographs, dash camera video recordings, or 9-1-1 audio recordings
- ▶ Although basic information cannot be withheld under section 552.108, other exceptions may apply to basic information



Hypothetical (Slide 1 of 2)

- ▶ Shield County Emergency Services District received a request for any 9-1-1 call recordings or transcripts related to the 8/22/16 trespassing incident. The district requests a ruling from the OAG in compliance with section 552.301. In its request for a ruling, the district raises section 552.108(a)(1).
 - May the district withhold the requested information under section 552.108(a)(1)?
 - No, section 552.108 applies to law enforcement agencies. The district is not a law enforcement agency. Thus, the district may not withhold the requested information based on its own interest.



Hypothetical (Slide 2 of 2)

- ▶ Can the district withhold the 9-1-1 call recordings and transcripts under section 552.108(a)(1) on behalf of the Marvel Police Department?



Section 552.108(a)(1)

- ▶ Section 552.108(a)(1) may be raised by an entity that is not a law enforcement agency or prosecutor when the entity is the **proper custodian** of information
 - The **proper custodian** must:
 - Demonstrate the information relates to a pending case of a law enforcement agency; and
 - Provide a representation from the law enforcement agency that it wishes to have the information withheld



Hypothetical

- ▶ Can the district withhold the requested 9-1-1 call recordings and transcripts under section 552.108(a)(1) on behalf of the Marvel Police Department?
 - Yes, if the district explains the Marvel Police Department wants the 9-1-1 call recordings and transcripts withheld under section 552.108(a)(1) because release would interfere with the department's ongoing criminal investigation.

- ▶ If the district does not comply with section 552.301 in requesting a ruling, can the district withhold the 9-1-1 call recordings and transcripts under section 552.108(a)(1) on behalf of the Marvel Police Department?
 - Yes, the need of another governmental body to withhold information under section 552.108(a)(1) is a compelling reason to withhold information.

#2

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 08-0203
Offense: Criminal Mischief
Location: 12 Hammer Circle
Date: 01/20/08
Time: 7:15 AM

COMPLAINANT

No. 01 Last: Coulson First: Phil Middle:
Race: Sex: M Age: 22
Address: 12 Shield Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

ARRESTEE

No. 01 Last: Banner First: Bruce Middle: "Hulk"
Race: Sex: M Age: 18
Address: 566 Green Drive SSN:
Home Phone: (830) 555-9872 Bus. Phone:

DETAILS OF INCIDENT

Complainant came to the police station alleging the suspect destroyed the complainant's golf cart and golf clubs. The complainant had invited the suspect out to play a round of golf at the Shield County Country Club Golf Course. After bogeying holes 3 and 4, and hitting his ball into the sand trap on the fifth hole, the suspect became enraged. The suspect then started smashing the complainant's golf cart with the complainant's golf clubs. Despite the complainant's pleas to calm down, the suspect continued to destroy the complainant's property. Once all of the complainant's golf clubs were destroyed, the suspect stormed off the green while screaming "Hulk Smash!"

ACTION TAKEN

The suspect was found in his home, passed out and wearing only shredded purple pants. The suspect claimed he had not destroyed the complainant's property, and asserted "The Other Guy" was responsible for the damage. The suspect was arrested.



Hypothetical

- ▶ The Marvel Police Department received a request for the previous police report. After the suspect offered to reimburse the complainant for all damages, the complainant declined to press charges, and the prosecutor dismissed the case.
- What should the department raise if it seeks to withhold this report?



What You Need To Tell Us When Asserting Section 552.108(a)(2)

- ▶ The submitted information is related to a closed criminal investigation or prosecution
- ▶ The criminal investigation or prosecution ended in a result other than conviction or deferred adjudication



Hypothetical

- ▶ What should the department raise if it seeks to withhold this report now?
 - Section 552.108(a)(2), because the prosecutor dismissed the case. Thus, this report relates to a closed investigation that did not result in conviction or deferred adjudication.

#3

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-0203

Offense: Theft

Date: 01/20/15

Location: 15 Marksman Street

Time: 7:15 AM

COMPLAINANT

No. 01 Last: Romanova First: Natasha Middle:
Race: Sex: F Age: 30
Work Address: 12 Black Widow Way SSN:
Home Phone: Bus. Phone:

ARRESTEE

No. 01 Last: Barnes First: James Middle: Bucky
Race: Sex: M Age: 42
Address: 566 Left Arm Drive SSN:
Home Phone: (830) 555-9872 Bus. Phone:

DETAILS OF INCIDENT

Complainant, an officer with the Marvel Police Department, was out with some friends at a shawarma restaurant. The complainant went to the bathroom, leaving her department issued cell phone at the table. When she returned, her cell phone had been stolen. The complainant's department issued cell phone number is (830) 555-0100.

ACTION TAKEN

The suspect was found at the black market attempting to sell the stolen phone. The suspect stated he was trying to sell it to the Winter Soldiers, a known gang in Marvel. The suspect was arrested.



Hypothetical

- ▶ The Marvel Police Department received a request for the previous police report. The department only seeks to withhold Officer Romanova's cellular telephone number.
- Can this information be protected under section 552.108?



What You Need To Tell Us When Asserting Section 552.108(b)(1)

- ▶ The submitted information consists of internal records or notations maintained for internal use for law enforcement or prosecution
- ▶ Detailed explanation of how release of the submitted information will interfere with law enforcement or prosecution

#3

552.108(b)(1)

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-0203
Offense: Theft Date: 01/20/15
Location: 15 Marksman Street Time: 7:15 AM

COMPLAINANT

No. 01 Last: Romanova First: Natasha Middle:
Race: Sex: F Age: 30
Work Address: 12 Black Widow Way SSN:
Home Phone: Bus. Phone:

ARRESTEE

No. 01 Last: Barnes First: James Middle: Bucky
Race: Sex: M Age: 42
Address: 566 Left Arm Drive SSN:
Home Phone: (830) 555-9872 Bus. Phone:

DETAILS OF INCIDENT

Complainant, an officer with the Marvel Police Department, was out with some friends at a shawarma restaurant. The complainant went to the bathroom, leaving her department issued cell phone at the table. When she returned, her cell phone had been stolen. The complainant's department issued cell phone number is (830) 555-0100.

ACTION TAKEN

The suspect was found at the black market attempting to sell the stolen phone. The suspect stated he was trying to sell it to the Winter Soldiers, a known gang in Marvel. The suspect was arrested.



What To Remember About Section 552.108

- ▶ Section 552.108 is a discretionary exception; the governmental body decides whether to raise it.
- ▶ Basic information may not be withheld under section 552.108.



Section 552.101

- ▶ Section 552.101 protects information that is made confidential by law outside of the Act, including constitutional, statutory, and judicial decisions
- ▶ Section 552.101 must be raised in conjunction with another law.
- ▶ Section 552.101 should not be raised in conjunction with one of the numbered exceptions in the Act.



Section 58.007(c) of the Family Code

- ▶ Protects law enforcement records of a child relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997

#2

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 08-0203
Offense: Criminal Mischief
Location: 12 Hammer Circle
Date: 01/20/08
Time: 7:15 AM

COMPLAINANT

No. 01 Last: Coulson First: Phil Middle:
Race: Sex: M Age: 22
Address: 12 Shield Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

ARRESTEE

No. 01 Last: Banner First: Bruce Middle: "Hulk"
Race: Sex: M Age: 18
Address: 566 Green Drive SSN:
Home Phone: (830) 555-9872 Bus. Phone:

DETAILS OF INCIDENT

Complainant came to the police station alleging the suspect destroyed the complainant's golf cart and golf clubs. The complainant had invited the suspect out to play a round of golf at the Shield County Country Club Golf Course. After bogeying holes 3 and 4, and hitting his ball into the sand trap on the fifth hole, the suspect became enraged. The suspect then started smashing the complainant's golf cart with the complainant's golf clubs. Despite the complainant's pleas to calm down, the suspect continued to destroy the complainant's property. Once all of the complainant's golf clubs were destroyed, the suspect stormed off the green while screaming "Hulk Smash!"

ACTION TAKEN

The suspect was found in his home, passed out and wearing only shredded purple pants. The suspect claimed he had not destroyed the complainant's property, and asserted "The Other Guy" was responsible for the damage. The suspect was arrested.

#4

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-6983
Offense: Runaway Date: 06/07/2015
Location: 12 Asgard Way Time: 6:38 PM

COMPLAINANT

No. 01 Last: Borson First: Odin Middle:
Race: Sex: M Age: 41
Address: 12 Asgard Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

SUSPECT

No. 01 Last: Borson First: Loki Middle:
Race: Sex: M Age: 14
Address: 12 Asgard Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

DETAILS OF INCIDENT

Complainant states his son, the suspect, ran away from home last night after a heated argument, in which the complainant revealed the suspect was adopted. At the time of the report, the suspect had not yet returned home.

ACTION TAKEN

Officers found the suspect hanging out in the parking lot of a local comic book store. He was escorted home.

#5

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-8007
Offense: Possession of Marijuana Date: 08/14/16
Location: 52 New York Avenue Time: 7:15 PM

COMPLAINANT

No. 01 Last: Jameson First: J. Middle: Jonah
Race: Sex: M Age: 61
Address: 586 Publishing Path SSN:
Home Phone: (830) 599-6825 Bus. Phone:

ARRESTEES

No. 01 Last: Parker First: Peter Middle: Benjamin
Race: Sex: M Age: 14
Address: 12 Amazing Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

No. 02 Last: Osborn First: Harry Middle:
Race: Sex: M Age: 15
Address: 895 Green Goblin Drive SSN: 888-32-3212
Home Phone: (830) 555-5478 Bus. Phone:

DETAILS OF INCIDENT

Complainant, principal of Hero Academy, states he was standing in the halls, observing students move from class to class, when he heard Parker tell Osborn, "I need to pick up Mary Jane again tonight." The complainant stated he knew "Mary Jane" slang for marijuana. The complainant then approached the boys and asked if they were talking about drugs. Parker told the complainant he had just been saying he needed to pick up his girlfriend that night. The complainant then asked the boys if they were being truthful or if they had any drugs on them. The two boys admitted to possessing marijuana and turned it over to the complainant.

ACTION TAKEN

Officer Rogers responded to the Hero Academy, took custody of the confiscated marijuana, and transported Parker and Osborn to the police station.



Hypothetical

- ▶ Are any of these three reports subject to section 58.007(c) of the Family Code?

#2

not subject to
section 58.007(c)

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 08-0203
Offense: Criminal Mischief
Location: 12 Hammer Circle
Date: 01/20/08
Time: 7:15 AM

COMPLAINANT

No. 01 Last: Coulson First: Phil Middle:
Race: Sex: M Age: 22
Address: 12 Shield Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

ARRESTEE

No. 01 Last: Banner First: Bruce Middle: "Hulk"
Race: Sex: M Age: 18
Address: 566 Green Drive SSN:
Home Phone: (830) 555-9872 Bus. Phone:

DETAILS OF INCIDENT

Complainant came to the police station alleging the suspect destroyed the complainant's golf cart and golf clubs. The complainant had invited the suspect out to play a round of golf at the Shield County Country Club Golf Course. After bogeying holes 3 and 4, and hitting his ball into the sand trap on the fifth hole, the suspect became enraged. The suspect then started smashing the complainant's golf cart with the complainant's golf clubs. Despite the complainant's pleas to calm down, the suspect continued to destroy the complainant's property. Once all of the complainant's golf clubs were destroyed, the suspect stormed off the green while screaming "Hulk Smash!"

ACTION TAKEN

The suspect was found in his home, passed out and wearing only shredded purple pants. The suspect claimed he had not destroyed the complainant's property, and asserted "The Other Guy" was responsible for the damage. The suspect was arrested.

#4

subject to section
58.007(c)

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-6983
Offense: Runaway
Location: 12 Asgard Way
Date: 06/07/2015
Time: 6:38 PM

COMPLAINANT

No. 01 Last: Borson First: Odin Middle:
Race: Sex: M Age: 41
Address: 12 Asgard Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

SUSPECT

No. 01 Last: Borson First: Loki Middle:
Race: Sex: M Age: 14
Address: 12 Asgard Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

DETAILS OF INCIDENT

Complainant states his son, the suspect, ran away from home last night after a heated argument, in which the complainant revealed the suspect was adopted. At the time of the report, the suspect had not yet returned home.

ACTION TAKEN

Officers found the suspect hanging out in the parking lot of a local comic book store. He was escorted home.

#5

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

subject to section
58.007(c)

Incident No.: 16-8007
Offense: Possession of Marijuana Date: 08/14/16
Location: 52 New York Avenue Time: 7:15 PM

COMPLAINANT

No. 01 Last: Jameson First: J. Middle: Jonah
Race: Sex: M Age: 61
Address: 586 Publishing Path SSN:
Home Phone: (830) 599-6825 Bus. Phone:

ARRESTEES

No. 01 Last: Parker First: Peter Middle: Benjamin
Race: Sex: M Age: 14
Address: 12 Amazing Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

No. 02 Last: Osborn First: Harry Middle:
Race: Sex: M Age: 15
Address: 895 Green Goblin Drive SSN: 888-32-3212
Home Phone: (830) 555-5478 Bus. Phone:

DETAILS OF INCIDENT

Complainant, principal of Hero Academy, states he was standing in the halls, observing students move from class to class, when he heard Parker tell Osborn, "I need to pick up Mary Jane again tonight." The complainant stated he knew "Mary Jane" slang for marijuana. The complainant then approached the boys and asked if they were talking about drugs. Parker told the complainant he had just been saying he needed to pick up his girlfriend that night. The complainant then asked the boys if they were being truthful or if they had any drugs on them. The two boys admitted to possessing marijuana and turned it over to the complainant.

ACTION TAKEN

Officer Rogers responded to the Hero Academy, took custody of the confiscated marijuana, and transported Parker and Osborn to the police station.



Hypothetical

- ▶ Can this last report be withheld under section 58.007(c):
 - If the requestor is the complainant, principal Jonah Jameson?
 - If the requestor is Peter's attorney?



Section 58.007(e) of the Family Code

- ▶ Information may not be withheld under section 58.007(c) when the requestor is:
 - a juvenile justice agency
 - a criminal justice agency
 - the child
 - the child's parent or guardian



Hypothetical (slide 1 of 2)

- ▶ If the requestor is principal Jonah Jameson?
 - Yes, the report must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Government Code.

- ▶ If the requestor is Peter's attorney?
 - No, pursuant to section 58.007(e), the requested offense report may not be withheld from Peter's attorney, as Peter's authorized representative.



Hypothetical (slide 2 of 2)

- ▶ If Peter's attorney is the requestor?
 - May the department raise section 552.108(a)(1) of the Government Code for the requested offense report?
 - Yes. Pursuant to section 58.007(j)(2), the department may raise section 552.108(a)(1) for information that may not be withheld under section 58.007(c).
 - If the department chooses not to raise section 552.108(a)(1), is there any information that needs to be redacted from the incident report prior to its release to Peter's attorney?

#5

w/h – 552.101 in conjunction
with 58.007(j)(1)

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-8007
Offense: Possession of Marijuana Date: 08/14/16
Location: 52 New York Avenue Time: 7:15 PM

COMPLAINANT

No. 01 Last: Jameson First: J. Middle: Jonah
Race: Sex: M Age: 61
Address: 586 Publishing Path SSN:
Home Phone: (830) 599-6825 Bus. Phone:

ARRESTEES

No. 01 Last: Parker First: Peter Middle: Benjamin
Race: Sex: M Age: 14
Address: 12 Amazing Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

No. 02 Last: Osborn First: Harry Middle:
Race: Sex: M Age: 15
Address: 895 Green Goblin Drive SSN: 888-32-3212
Home Phone: (830) 555-5478 Bus. Phone:

DETAILS OF INCIDENT

Complainant, principal of Hero Academy, states he was standing in the halls, observing students move from class to class, when he heard Parker tell Osborn “I need to pick up Mary Jane again tonight.” The complainant stated he knew “Mary Jane” slang for marijuana. The complainant then approached the boys and asked if they were talking about drugs. Parker told the complainant he had just been saying he needed to pick up his girlfriend that night. The complainant then asked the boys if they were being truthful or if they had any drugs on them. The two boys admitted to possessing marijuana and turned it over to the complainant.

ACTION TAKEN

Officer Rogers responded to the Hero Academy, took custody of the confiscated marijuana, and transported Parker and Osborn to the police station.



What You Need To Tell Us When Asserting Section 58.007(c)

- ▶ The submitted information consists of law enforcement records that relate to an identified child suspect or offender who was at least 10 years old and under age 17 at the time the conduct occurred
- ▶ The conduct at issue in the submitted information consists of delinquent conduct or conduct indicating a need for supervision
- ▶ The submitted information relates to conduct that occurred on or after September 1, 1997
- ▶ Whether the requestor is a juvenile justice agency, a criminal justice agency, the child, or the child's parent or guardian, and thus, section 58.007(e) applies
- ▶ If section 58.007(e) applies, explain whether you seek to withhold the information under another provision of law, such as section 552.108 of the Government Code

#6

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-7089
Offense: Injury to a Child Date: 05/16/16
Location: 12 Sokovia Way Time: 1:26 AM

VICTIM

No. 01 Last: Maximoff First: Wanda Middle: Scarlett
Race: Sex: F Age: 13
Address: 12 Sokovia Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

SUSPECT

No. 01 Last: Maximoff First: Erik Middle: Magneto
Race: Sex: M Age: 39
Address: 12 Sokovia Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

COMPLAINANT

No. 01 Last: Maximoff First: Magda Middle: Organa
Race: Sex: F Age: 38
Address: 12 Sokovia Way SSN:
Home Phone: (830) 555-8070 Bus. Phone:

DETAILS OF INCIDENT

Complainant reported her daughter, Wanda, overheard her husband, the suspect, discussing his plans to burglarize a local jewelry store. Wanda confronted the suspect, saying she was going to tell the police about the suspect's plans. The suspect grew angry and hit the victim with her toy wolverine doll, which caused deep lacerations to the victim's face.

ACTION TAKEN

The suspect was arrested and taken to the police station.



Section 261.201(a) of the Family Code

- ▶ Protects reports of abuse or neglect of a child, the identity of the person making the report of abuse or neglect of a child, and information used or developed in an investigation of abuse or neglect of a child
- ▶ Records used or developed in a child abuse or neglect investigation may be withheld only if the investigation was conducted by an agency authorized to conduct such an investigation
- ▶ Applies to records involving a child victim who was under the age of 18 at the time of the alleged abuse or neglect



Hypothetical

- ▶ Is report #6 subject to section 261.201 of the Family Code?

#6

subject to section
261.201(a)

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-7089

Offense: Injury to a Child

Date: 05/16/16

Location: 12 Sokovia Way

Time: 1:26 AM

VICTIM

No. 01 Last: Maximoff

First: Wanda

Middle: Scarlett

Race: Sex: F

Age: 13

Address: 12 Sokovia Way

SSN:

Home Phone: (830) 555-8070

Bus. Phone:

SUSPECT

No. 01 Last: Maximoff

First: Erik

Middle: Magneto

Race: Sex: M

Age: 39

Address: 12 Sokovia Way

SSN:

Home Phone: (830) 555-8070

Bus. Phone:

COMPLAINANT

No. 01 Last: Maximoff

First: Magda

Middle: Organa

Race: Sex: F

Age: 38

Address: 12 Sokovia Way

SSN:

Home Phone: (830) 555-8070

Bus. Phone:

DETAILS OF INCIDENT

Complainant reported her daughter, Wanda, overheard her husband, the suspect, discussing his plans to burglarize a local jewelry store. Wanda confronted the suspect, saying she was going to tell the police about the suspect's plans. The suspect grew angry and hit the victim with her toy wolverine doll, which caused deep lacerations to the victim's face.

ACTION TAKEN

The suspect was arrested and taken to the police station.



Hypothetical (Slide 1 of 4)

- ▶ Can report #6 be withheld under section 261.201:
 - If the requestor is Erik Maximoff, Wanda's father?
 - If the requestor is Magda Maximoff, Wanda's mother?



Hypothetical (Slide 2 of 4)

- ▶ If the requestor is Erik Maximoff, Wanda's father?
 - Yes, the report can be withheld from Erik under 261.201(a). Although Erik is a parent of Wanda, the child victim, Erik is accused of committing the abuse. Thus, pursuant to section 261.201(k), the requested report may not be released to Erik.

- ▶ If the requestor is Magda Maximoff, Wanda's mother?
 - No, the reports cannot be withheld from Magda under 261.201(a). Pursuant to section 261.201(k), Magda has a right of access to the reports as the mother of the victim who is not accused of committing the abuse.



Hypothetical (Slide 3 of 4)

- ▶ If Magda is the requestor:
 - May the department raise section 552.108?



Hypothetical (Slide 4 of 4)

- ▶ In response to Magda's request, the department asserts it wants to withhold the injury to a child report because it relates to the department's ongoing criminal investigation into the incident. The department complies with section 552.301, raises section 552.108(a)(1), and states the information relates to its ongoing criminal investigation. Can the department withhold the report under section 552.108(a)(1)?
 - Yes. Pursuant to section 261.201(l)(2), the department may raise section 552.108. The department raises section 552.108(a)(1) and states the investigation is ongoing. Thus, the department has demonstrated release of the injury to a child report would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may withhold the information under section 552.108(a)(1).



What You Need To Tell Us When Asserting Section 261.201(a)

- ▶ Explain whether the requested information consists of a report of or was used in a child abuse or neglect investigation or contains the identity of an individual who made a report of child abuse or neglect
- ▶ The age of the child victim
- ▶ Whether the requestor is the parent of the victim who is not alleged to have committed the abuse/neglect, the managing conservator or legal representative of the child, or the child victim who is now at least 18 years of age and, thus, section 261.201(k) applies
- ▶ If section 261.201(k) applies, explain whether you seek to withhold the information under another provision of law, such as section 552.108 of the Government Code



Common-Law Privacy

- ▶ Common-law privacy protects information that is:
 - (1) highly intimate or embarrassing, **AND**
 - (2) not of legitimate concern to the public



Hypothetical (Slide 1 of 3)

- ▶ Former business partners Tony Stark and Bruce Banner are feuding over who owns the rights to software they developed together. Intending to determine if Bruce has had issues with other work associates in the past, Tony makes the following request to the Marvel Police Department:
 - “I would like all reports involving Bruce Banner from 2006 to the present.”



Hypothetical (Slide 2 of 3)

- ▶ The department compiled the following reports involving Bruce Banner:
 - 2007 offense report involving Bruce as an arrestee for vandalism
 - 2008 offense report listing Bruce as an arrestee for criminal mischief
 - 2009 offense report in which Bruce received a citation for speeding
 - 2010 sexual assault offense report involving Bruce as a witness
 - 2016 offense report listing Bruce as an involved party in an attempted suicide



Hypothetical (Slide 3 of 3)

- ▶ May the department withhold any of the responsive offense reports under common-law privacy in response to Tony Stark's request?



Criminal History Compilation

- ▶ A criminal history compilation is a compilation or summary of an individual's criminal history when created by a governmental body and includes:
 - A note in an offense report stating the governmental body's database reveals an individual was previously convicted of a specified crime
 - Offense reports depicting an individual as a suspect, arrestee, or criminal defendant when the requestor seeks unspecified records pertaining to a named individual



Types of Information Not Included in an Individual's Criminal History Compilation

- ▶ A compilation does not include records involving an individual as a complainant, victim, or witness
- ▶ Warrant information is not part of a compilation of criminal history because it involves an individual's current involvement in the criminal justice system
- ▶ Driving record information is not included in the definition of criminal history



Types of Requests Which Do Not Implicate an Individual's Privacy Interest

- ▶ A request for specified records, for specific report numbers, for example, does not implicate an individual's right to privacy
- ▶ A request for records pertaining to a specified address does not implicate an individual's right to privacy



Hypothetical (Slide 1 of 2)

- ▶ Can the department withhold the following reports as a compilation of Bruce Banner's criminal history?
 - 2007 offense report involving Bruce as an arrestee for vandalism – Yes.
 - 2008 offense report listing Bruce as an arrestee for criminal mischief – Yes.
 - 2009 offense report in which Bruce received a citation for speeding – No.
 - 2010 sexual assault offense report involving Bruce as a witness – No.
 - 2016 offense report listing Bruce as an involved party in an attempted suicide – No.



Hypothetical (Slide 2 of 2)

- ▶ The Marvel Police Department prepares to release the 2009 offense report involving Bruce as the suspect for speeding in response to Tony's request. The following is a copy of the offense report. Must the department withhold any portion of the report under section 552.101 in conjunction with common-law privacy?

#7

w/h – 552.101 in
conjunction with
common-law privacy

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 09-0324

Offense: Speeding

Date: 12/22/09

Location: 800 Green Drive

Time: 10:00 AM

INVOLVED PARTIES

No. 01

Last: Banner

First: Bruce

Middle:

Race:

Sex: M

Age: 19

DETAILS OF INCIDENT

Officer Rogers observed a green minivan going in excess of 55 miles per hour on a residential street with a posted speed limit of 35 miles per hour. Officer Rogers activated his emergency lights, and the minivan immediately slowed and pulled to a stop on the side of the street. Officer Rogers approached the green minivan and obtained identification from the driver, Bruce Banner. Officer Rogers ran a criminal history search through the department's local criminal history database, which yielded the following: 2007 conviction for vandalism. Banner has no outstanding warrants.

ACTION TAKEN

Officer Rogers issued Banner a traffic citation for speeding.



Hypothetical

- ▶ Must the department withhold any portion of the sexual assault offense report under common-law privacy?



Sexual Assault

▶ Information Protected

- If the requestor knows the identity of the sexual assault victim, the entirety of the offense report must be withheld
- If the requestor does not know the identity of the sexual assault victim, the identifying information of the sexual assault victim must be withheld
 - Note: The identity of a sexual assault victim must be withheld under section 552.101 in conjunction with common-law privacy when releasing basic information pursuant to section 552.108(c)



Hypothetical

- ▶ Can the 2010 sexual assault report be withheld from Tony Stark in its entirety under section 552.101 in conjunction with common-law privacy?
 - No. In this instance, Tony Stark requested all information about Bruce and does not specify any information. Thus, there is no indication Tony Stark knows the identity of the sexual assault victim.

- ▶ Is any portion of the sexual assault report excepted from disclosure under section 552.101 in conjunction with common-law privacy?
 - Yes. The department must withhold all identifying information of the sexual assault victim under section 552.101 in conjunction with common-law privacy.

#8

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

Incident No.: 16-10885
Offense: Attempted Suicide
Location: 12 Iowa Way

Date: 1/06/16
Time: 7:30 PM

INVOLVED PARTIES

No. 01 Last: Barton First: Clinton Middle: Francis
Race: Sex: M Age: 38
Address: 12 Iowa Way
Home Phone: (830) 555-8070

No. 02 Last: Banner First: Bruce Middle:
Race: Sex: M Age:

DETAILS OF INCIDENT

Bruce Banner was working late at his office when he heard his co-worker crying uncontrollably in the adjacent office. Clint told Bruce he was fed up with the stress of his job and for being belittled by co-workers for his lack of extraordinary talents. Clint asked Bruce to tell his wife and children and their friend Natasha goodbye. Clint then attempted to shoot himself with his bow and arrow. Bruce pushed Clint out of the way.

ACTION TAKEN

Officer Rogers arrived on the scene and contacted EMS. EMS transported Clint to the Shield County Memorial Hospital for treatment and observation.



Hypothetical

- ▶ Does the department have to withhold any portion of the attempted suicide report under common-law privacy?



Attempted Suicide

▶ Information Protected

- If the requestor knows both the identity of the individual who attempted suicide AND knows the individual attempted suicide, the entirety of the offense report must be withheld
- If the requestor does not know the identity of the individual that attempted suicide OR does not know the individual attempted suicide, only those portions of the information revealing the individual attempted suicide must be withheld
 - Note: References to an attempted suicide must be withheld when releasing basic information pursuant to section 552.108(c)



Hypothetical

- ▶ Can the entirety of the attempted suicide report be withheld from Tony Stark under common-law privacy?
 - No. Tony does not know Clint attempted suicide.
- ▶ What portions of the attempted suicide report must be withheld from Tony under common-law privacy?

#8

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

w/h – 552.101 in
conjunction with
common-law privacy

Incident No.: 16-10885

Offense: Attempted Suicide

Date: 1/06/16

Location: 12 Iowa Way

Time: 7:30 PM

INVOLVED PARTIES

No. 01 Last: Barton First: Clinton Middle: Francis
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Address: 12 Iowa Way
Home Phone: (830) 555-8070

No. 02 Last: Banner First: Bruce Middle:
Race: Sex: M Age:

DETAILS OF INCIDENT

Bruce Banner was working late at his office when he heard his co-worker crying uncontrollably in the adjacent office. Clint told Bruce he was fed up with the stress of his job and for being belittled by co-workers for his lack of extraordinary talents. Clint asked Bruce to tell his wife and children and their friend Natasha goodbye. Clint then attempted to shoot himself with his bow and arrow. Bruce pushed Clint out of the way.

ACTION TAKEN

Officer Rogers arrived on the scene and contacted EMS. EMS transported Clint to the Shield County Memorial Hospital for treatment and observation.



Hypothetical

- ▶ Marvel Police Department is called to the scene of an accident. The department conducts an investigation and arrests Tony Stark for Driving While Intoxicated. The case is forwarded to the Shield County District Attorney's Office and charges are accepted. As the district attorney's office is preparing its case, it receives a request from Maria Hill for the district attorney's office's entire litigation file.
- What exception to disclosure should the district attorney's office raise if it seeks to withhold the requested information from Maria?



Section 552.108(a)(4)

- ▶ Protects information that deals with the detection, investigation, or prosecution of crime if the information is prepared by or reflects the mental impressions or legal reasoning of an attorney representing the state in anticipation of criminal litigation or for criminal litigation

- ▶ **Examples:**
 - Witness interview notes
 - Jury observations/voir dire preparations
 - Investigation/case summaries
 - Legal research

- ▶ Pursuant to *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), a district attorney's entire litigation file may be withheld under section 552.108(a)(4) if the request is for the entire litigation file



What You Need To Tell Us When Asserting Section 552.108(a)(4)

- ▶ Whether the information was prepared by or reflects the mental impressions or legal reasoning of an attorney representing the state
- ▶ Whether the information pertains to anticipated or pending criminal litigation



Hypothetical (Slide 1 of 5)

- ▶ What exception to disclosure should the district attorney's office raise to successfully withhold the requested information from Maria Hill?
- ▶ The district attorney's office should raise section 552.108(a)(4). With the exception of basic information, the district attorney's office may withhold the requested information under section 552.108(a)(4) pursuant to *Curry v. Walker*.



Hypothetical (Slide 2 of 5)

- ▶ The district attorney's office receives a related request from Tony Stark. Instead of requesting the entire prosecution file, Tony requests the following categories of information from the district attorney's office:
 - Attorney notes
 - Crash report
 - Dash camera video recordings
 - Emergency medical records
 - 9-1-1 call report
 - Criminal History Record Information
 - Medical Records
 - Mental health records



Hypothetical (Slide 3 of 5)

- ▶ Could the district attorney's office withhold the entirety of the information requested from Tony Stark under section 552.108(a)(4) pursuant to *Curry v. Walker*?
- No. Tony has specifically itemized the precise documents held by the district attorney's office that he seeks. Such a request does not constitute a request for the "entire" file. Thus, we conclude the present request is not a request for the district attorney's entire prosecution file. The district attorney's office may not withhold the requested information under *Curry*, and the district attorney's office must demonstrate each requested category of information is excepted from disclosure under section 552.108(a)(4) of the Government Code or another applicable exception.



Hypothetical (Slide 4 of 5)

- ▶ Can the district attorney's office withhold any portion of the information requested by Tony Stark under section 552.108(a)(4)?
 - Yes, the district attorney's office may withhold the requested attorney notes under section 552.108(a)(4) because the notes consist of information prepared by an assistant district attorney in anticipation of or in the course of preparing for criminal litigation.



Hypothetical (Slide 5 of 5)

- ▶ Although the district attorney's office may not withhold the entirety of the information requested by Tony Stark under section 552.108(a)(4), is there other law that applies to the requested information?



Texas Peace Officer's Crash Report (Form CR-3 1/1/2015)
Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714. Questions? Call 844/274-7457
Refer to Attached Code Sheet for Numbered Fields

*=These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

*Crash Date (MM/DD/YYYY) 07/08/2016		*Crash Time (24HRMM) 1 1 0 0		Case ID 00110011		Local Use 570	
*County Name Shield		*City Name Marvel		<input type="checkbox"/> Outside City Limit			
In your opinion, did this crash result in at least \$1,000 damage to any one person's property? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No							
ROAD ON WHICH CRASH OCCURRED							
*1 Rdwy. Sys. LR		*Hwy. Num.		2 Rdwy. Part		Block Num. 3000	
<input type="checkbox"/> Crash Occurred on a Private Drive or Road/Private Property/Parking Lot		<input type="checkbox"/> Toll Road/Toll Lane		Speed Limit 48		Const. Zone <input checked="" type="checkbox"/> No	
				Workers Present <input checked="" type="checkbox"/> No		Street Desc.	
INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER							
At Int. <input type="checkbox"/> Yes <input type="checkbox"/> No		1 Rdwy. Sys. LR		2 Rdwy. Part		Block Num. 2000	
Distance from Int. or Ref. Marker		<input type="checkbox"/> FT <input type="checkbox"/> MI		3 Dir. from Int. or Ref. Marker		Reference Marker	
				3 Street Prefix S		Street Name Storm	
						4 Street Suffix ST	
VEHICLE, DRIVER, & PERSONS							
Unit Num. 12		5 Unit Desc. 13		<input type="checkbox"/> Parked Vehicle <input type="checkbox"/> Hit and Run		LP State TX	
Veh. Year 2 0 0 7		6 Veh. Color Red		Veh. Make Audi		7 Body Style Sleek	
8 DL/ID Type DL		DL/ID State TX		DL/ID Num. 00126501		9 DL Class C	
Address (Street, City, State, ZIP)				10 CDL End.		11 DL Rest.	
						DOB (MM/DD/YYYY) 0 8 / 0 6 / 1 9 7 9	
Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line							
Stark, Tony							
Person Num. 1		12 Psn. Type		13 Seat Position		14 Injury Severity	
						Age 36	
						15 Ethnicity	
						16 Sex	
						17 Eject.	
						18 Restr.	
						19 Airbag	
						20 Helmet	
						21 Sol.	
						22 Alc. Spec.	
						Alc. Result	
						23 Drug Spec.	
						24 Drug Result	
						25 Drug Category	
Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.							
<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Lessee		Owner/Lessee Name & Address Stark, Tony		26 Fin. Resp. Type		Fin. Resp. Name	
Proof of Fin. Resp. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Expired <input type="checkbox"/> Exempt		27 Vehicle Damage Rating 1 1 - R B Q - 1		27 Vehicle Damage Rating 2 2 - - -	
Fin. Resp. Phone Num. (800) 555-0000				Towed By		Towed To	
VEHICLE, DRIVER, & PERSONS							
Unit Num.		5 Unit Desc.		<input type="checkbox"/> Parked Vehicle <input type="checkbox"/> Hit and Run		LP State	
Veh. Year		6 Veh. Color		Veh. Make		7 Body Style	
8 DL/ID Type		DL/ID State		DL/ID Num.		9 DL Class	
Address (Street, City, State, ZIP)				10 CDL End.		11 DL Rest.	
						DOB (MM/DD/YYYY)	
Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line							
Person Num.		12 Psn. Type		13 Seat Position		14 Injury Severity	
						Age 50	
						15 Ethnicity	
						16 Sex	
						17 Eject.	
						18 Restr.	
						19 Airbag	
						20 Helmet	
						21 Sol.	
						22 Alc. Spec.	
						Alc. Result	
						23 Drug Spec.	
						24 Drug Result	
						25 Drug Category	
Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.							
<input type="checkbox"/> Owner <input type="checkbox"/> Lessee		Owner/Lessee Name & Address		26 Fin. Resp. Type		Fin. Resp. Name	
Proof of Fin. Resp. <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Expired <input type="checkbox"/> Exempt		27 Vehicle Damage Rating 1 - - -		27 Vehicle Damage Rating 2 - - -	
Fin. Resp. Phone Num.				Towed By		Towed To	



Section 550.065(b) of the Transportation Code

▶ Information protected

- A peace officer's accident report that is completed pursuant to section 550.061, section 550.062, or section 601.004 of the Transportation Code and accident report information compiled under section 201.806 of the Transportation Code

▶ Examples

- CR-3
- CRB-3
- ST-3



Section 550.065(c) of the Transportation Code

- ▶ A governmental body must release an accident report to certain enumerated persons
- ▶ Section 550.065(c-1) requires a governmental body to create a redacted accident report that may be requested by any person



Hypothetical (Slide 1 of 3)

- ▶ Can the district attorney's office withhold the CR-3 from Tony Stark under section 552.101 in conjunction with section 550.065(b)?
 - No. Tony is one of the individuals enumerated in section 550.065(c). Thus, the district attorney's office must release the requested CR-3 to Tony.



Hypothetical (Slide 2 of 3)

- ▶ If Maria Hill specifically requests the CR-3, can the district attorney's office withhold the CR-3 from Maria under section 550.065(b)?
 - Yes. Maria is not an individual enumerated in section 550.065(c). Accordingly, the district attorney's office must withhold the CR-3 under section 552.101 in conjunction with section 550.065(b).
 - However, the district attorney's office must release a redacted report to Maria pursuant to section 550.065(c-1).



Hypothetical (Slide 3 of 3)

- ▶ The district attorney's office has copies of dash camera video recordings of the arrest of Tony Stark and the administration of Tony's field sobriety test. May the district attorney's office withhold these recordings from Tony?



Article 2.139 of the Code of Criminal Procedure

- ▶ Provides a **right of access to** a person stopped or arrested on suspicion of driving while intoxicated, driving while intoxicated with child passenger, intoxication assault, or intoxication manslaughter to footage of:
 - the stop
 - the arrest
 - the conduct of the person stopped, including administration of a field sobriety test
 - a procedure in which a specimen of the person's breath or blood is taken

- ▶ The video recording must have been made by or at the direction of the peace officer who made the stop or arrest

- ▶ Right of access only applies to the law enforcement agency employing the peace officer who made the stop or arrest



Hypothetical

- ▶ May the district attorney's office withhold the dash camera video recording from Tony Stark?
 - Yes. The district attorney's office is not the law enforcement agency that employs the peace officer who made the arrest. Therefore, Tony Stark does not have a right of access to the recording contained in the district attorney's office's records.

- ▶ If Tony Stark requests the dash camera video recording from the Marvel Police Department, could the department withhold the recording from Tony under section 552.108?
 - No. Tony was arrested for suspicion of driving while intoxicated, and the recording portrays his arrest and the administration of his field sobriety test by a department police officer. Thus, Tony has a right of access to the recording contained in the department's records under article 2.139.



Section 773.091 of the Health and Safety Code

- ▶ Applies to emergency medical services records
- ▶ However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services is **not** confidential under section 773.091

PRO*EMS

Professional Ambulance Services
Marvel, Texas 70001
512-555-8888

Release information subject to
773.091(g), withhold rest of page
.101/773.091 Health & Safety Code

Trip Information

Call Location: 3000 block of Hulk St. **Crew #1:** Harold Hogan
Nature of Call: traffic accident/intoxicated person **#2:** James Rhodes
Medical/Trauma: Trauma
Outcome: patient transported to hospital **Resp. Priority:** P1
Vehicle: 14
Unit: A14 **Scene Delay:** none
Recv'd: 11:16 09/25/16 **Trans. Delay:** none
En route: 11:17 09/25/16
At scene: 11:28 09/25/16
Loc. Type: Intersection

Patient Information

Name: Stark, Tony **Weight:** 220 lbs **Address:** 400 Hero Ln.
SSN: 596-58-1234 **Gender:** male **Marvel, Texas 70001**
DOB: 08/06/1979 **Phone:** 830-555-8070

Assessment

9/25/15 11:35 by: Hogan
Dispatched to above location for traffic accident/intoxicated driver; driver of vehicle seems to be highly intoxicated and has minor injuries to his hands; applied bandages to hands; patient transported to hospital.

Crew # **Name**
1212 **Harold Hogan**

Crew# **Name**
8451 **James Rhodes**

X Harold Hogan

X James Rhodes

Incident History for #16-5656 Ref. # 4141729

- ▶ Entered: 07/08/16 9:45pm
- ▶ Dispatch: 07/08/16 9:47pm
- ▶ Initial Type: Erratic Driving
- ▶ Final Type: Erratic Driving

Name of Caller: Maria Hill

Caller Phone number: 512-555-0202

Caller states she is driving behind a car that is driving erratically and blowing through stop signs.

Caller unable to read license plate; states it is a vanity plate; Driver of vehicle: UNKNOWN



Sections 772.118, 772.218, and 772.318 of the Health and Safety Code

▶ Information protected

- Originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier
- ▶ The applicability of these sections depends on the population size of the county in which the emergency communication district is located
- ▶ Sections 772.118, 772.218, and 772.318 do not apply to information a 9-1-1 caller provides
- ▶ Does **not** protect the name of the caller



What You Need To Tell Us

- ▶ Whether your governmental body is part of an emergency communication district established under one of these sections
- ▶ Whether the information contains the originating telephone number or address of a 9-1-1 caller
- ▶ Whether the telephone number or address was **provided by a 9-1-1 service supplier**

Incident History for #16-5656 Ref. # 4141729

- ▶ Entered: 07/08/16 9:45pm
- ▶ Dispatch: 07/08/16 9:47pm
- ▶ Initial Type: Erratic Driving
- ▶ Final Type: Erratic Driving

withhold -
.101/772.318

Name of Caller: Maria Hill

Caller Phone number: 512-555-0202

Caller states she is driving behind a car that is driving erratically and blowing through stop signs.

Caller unable to read license plate; states it is a vanity plate; Driver of vehicle: UNKNOWN

NO TCIC WANT NAM/STARK, TONY RAC/W SEX/M

*THIS MESSAGE IS FROM TCIC 2000 SYSTEM. **
OUTPUT MSG 129, FROM TCC# FOR TRST 09/25/2016

DISSEMINATED ON TLETS FOR CRIMINAL JUSTICE PURPOSES
ONLY

NO IDENTIFIABLE RECORD IN THE NCIC INTERSTATE
IDENTIFICATION FOR NAM/STARK, TONY DOB/19790806 RAC/W
SEX/M

DISSEMINATED ON TLETS FOR CRIMINAL JUSTICE PURPOSES
ONLY



Chapter 411 of the Government Code

- ▶ Examples of criminal history record information
 - Department of Public Safety computerized criminal history printout
 - FBI numbers
 - An indication of “No record” from NCIC

- ▶ Criminal history record information does not encompass driving record information
 - License plate checks are not withheld as criminal history record information

- ▶ Information pertaining to an individual’s current involvement in the criminal justice system is not criminal history record information
 - Warrant information is not withheld as criminal history record information

withhold-
.101/Chapter 411 of
the Gov. Code

NO TCIC WANT NAM/STARK, TONY RAC/W SEX/M

*THIS MESSAGE IS FROM TCIC 2000 SYSTEM. **

OUTPUT MSG 129, FROM TCC# FOR TRST 09/25/2016

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ONLY

NO IDENTIFIABLE RECORD IN THE NCIC INTERSTATE
IDENTIFICATION FOR NAM/STARK, TONY DOB/19790806 RAC/W
SEX/M

DISSEMINATED ON TLETS FOR CRIMINAL JUSTICE PURPOSES
ONLY

Dr. Stan Lee
123 Avenger Way
Marvel, Texas 70002
(512) 555-1977

PATIENT NAME: Tony Stark
PATIENT PHONE: (512) 555-9665
DIAGNOSIS: Fractured Metacarpal

Rx

Oxycodone 5MG

Take 1 tablet by mouth twice daily

REFILLS: None

PHYSICIAN NAME (PRINT): Dr. Stan Lee

PHYSICIAN SIGNATURE: *Stan Lee M.D.*



Section 159.002 of the Occupations Code

- ▶ Applies to **medical records**
 - Excepts records created by a physician or someone under the supervision of a physician
 - Excepts both medical records and information obtained from those medical records
 - When a file is created because of a hospital stay, all documents in a file referring to the diagnosis or treatment are subject to section 159.002

withhold page - .101/MPA

Dr. Stan Lee
123 Avenger Way
Marvel, Texas 70002
(512) 555-1977

PATIENT NAME: Tony Stark
PATIENT PHONE: (512) 555-9665
DIAGNOSIS: Fractured Metacarpal

Rx

Oxycodone 5MG

Take 1 tablet by mouth twice daily

REFILLS: None

PHYSICIAN NAME (PRINT): Dr. Stan Lee

PHYSICIAN SIGNATURE: *Stan Lee M.D.*

DR. HANK MCCOY & ASSOCIATES

A COMPREHENSIVE CLINICAL PSYCHOLOGY PRACTICE

September 30, 2016

To Whom It May Concern:

Tony Stark is one of my long-time psychiatric patients. I have been treating him for many years, even before he began his career as Iron Man. His symptoms include irritability, reckless spontaneity, carelessness with money, depression, and narcissism. I diagnosed Stark with Narcissistic Personality Disorder and Depression. Due to the severity of his symptoms, I also wrote Stark a prescription for Prozac and Lithium.

Please do not hesitate to contact me if I can provide you with further information.

Sincerely,

Dr. Hank McCoy



Section 611.002 of the Health and Safety Code

- ▶ **Applies to mental health records**
 - Expects communications between a patient and a professional and records of the identity, diagnosis or treatment of a patient created or maintained by a professional

DR. HANK MCCOY & ASSOCIATES

A COMPREHENSIVE CLINICAL PSYCHOLOGY PRACTICE

September 30, 2016

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Please do not hesitate to contact me if I can provide you with further information.

Sincerely,

Dr. Hank McCoy



Identity Theft (Slide 1 of 2)

- ▶ Section 32.51 of the Penal Code

- ▶ Identity theft offenses include:
 - Forgery
 - Check fraud
 - Unauthorized use of identifying information
 - Fraudulent use of identifying information
 - Credit card/debit card abuse



Identity Theft (Slide 2 of 2)

▶ Article 2.29 of the Code of Criminal Procedure

- Governmental body shall provide identity theft report to the victim, unless the information is confidential
- ▶ Article 2.29 applies if the violation of section 32.51(b) occurred **on or after September 1, 2005**
- ▶ Only confidential information may be withheld from an offense report that is subject to release pursuant to article 2.29



Things to Consider about Identity Theft Reports

- ▶ Whether the report pertains to a violation of section 32.51 that occurred on or after September 1, 2005
 - ▶ Whether the requestor is the victim of the alleged offense
 - ▶ If the requestor is the victim of an alleged section 32.51 offense, whether any portion of the information is confidential
- ❖ **PIA PRO TIP:** Section 552.108 does not make information confidential



Hypothetical (Slide 1 of 2)

- ▶ Charles Xavier requests the credit card abuse offense report from the police department. Could the department withhold the offense report from Charles under section 552.108?
 - No. In this instance, the submitted information pertains to a report of credit card abuse, which constitutes an alleged violation of section 32.51. The alleged offense occurred after September 1, 2005. Thus, the requested report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the victim, Charles, unless the information at issue is otherwise confidential.



Hypothetical (Slide 2 of 2)

- ▶ Is there any information the department must withhold when releasing the report to Charles Xavier?



Section 552.152

- ▶ Protects information that would subject an **employee or officer** to a substantial threat of physical harm
 - Example: identifying information of an undercover officer



What You Need To Tell Us When Asserting Section 552.152

- ▶ A governmental body must demonstrate how release of the information at issue would subject the employee or officer to a substantial threat of physical harm
- A general assertion that release could endanger an employee or officer will not meet this burden



Hypothetical

- ▶ Now, let's assume, instead of the Charles Xavier, Emma Frost makes a request to the department for the report. Can the department withhold the complainant's identity from the report prior to releasing it to Emma?



Informer's Privilege (Slide 1 of 2)

- ▶ Protects identities of individuals who report violations of statutes to the police or similar law enforcement agencies, The report must be of a violation of a criminal or civil statute
- ▶ The informer's privilege protects the informer's identity **AND** any portion of the informer's statement that might tend to reveal the informer's identity
- ▶ The informer's privilege does not apply when the subject of the information knows the informer's identity
- ▶ Individuals who provide information during the course of an investigation, but who **do not make a report**, such as witnesses, are not informants for purposes of the informer's privilege



Informer's Privilege (Slide 2 of 2)

- ▶ The informer's privilege is raised in conjunction with section 552.101

- ▶ **But** a governmental body waives the informer's privilege by failing to comply with section 552.301 of the Government Code
 - **Because** the courts have determined the informer's privilege protects the interests of a governmental body, not a third party, including the informer.

- ▶ **NOTE:** Although the informer's privilege does not protect witnesses, *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers L.L.C.* recognizes a separate common-law physical safety exception to required disclosure if disclosure would create a ***substantial threat of physical harm***.



What You Need To Tell Us When Asserting the Informer's Privilege

- ▶ The individual at issue reported a violation of law to the police or an administrative official with a duty of inspection or law enforcement
- ▶ **Identify** the alleged violation of law
- ▶ Inform us the alleged violation of law is punishable by civil or criminal penalties
- ▶ Inform us the subject of the report does not know the identity of the informer



Hypothetical

- ▶ Can the department withhold the complainant's identity from the report prior to releasing it to Emma Frost?
 - Yes. The complainant, Charles Xavier, reported an alleged violation of law that is punishable by criminal penalties to the department, and there is no indication Emma knows the identity of the informer. Thus, the department may withhold the complainant's identity from Emma under section 552.101 in conjunction with the informer's privilege.

#9

MARVEL, TX POLICE DEPARTMENT OFFENSE REPORT

withhold – .101/
informer's privilege

Incident No.: 16-00639
Offense: Credit Card Abuse
Location: 2700 Mystique Lane
Date: 10/06/16
Time: 2:30 PM

COMPLAINANT

No. 01 Last: Xavier First: Charles Middle:
Race: Sex: M Age: 60
Address: 150 Wolverine Street
Home Phone: (512) 555-8070

SUSPECT

No. 02 Last: Frost First: Emma Middle:
Race: Sex: F Age: 19
Address: 2222 Lightning Road
Home Phone: (512) 555-7232

DETAILS OF INCIDENT

Complainant reports suspect stole his credit card that he dropped while teaching a class and used it to purchase over \$20,000 worth of diamonds and jewels at Mystique's Jewels. Complainant states after the class he saw the suspect, one of his students, buying multiple diamonds and jewels at Mystique's Jewels. Complainant states he checked his credit card activity when he arrived home and immediately called to report the unauthorized purchases.

Undercover Officer Steve Rogers was on duty at Mystiques Jewels as there had been multiple armed robberies in the store in the last few weeks. Rogers reports he witnessed suspect purchase a large number of diamonds and jewels shortly after school ended that afternoon.

ACTION TAKEN

Suspect was brought to the station for questioning.



Hypothetical (Slide 1 of 2)

- ▶ Bruce Banner was driving home during rush hour when a car driven by Pepper Potts quickly changed lanes in front of him without any warning. Bruce, who was already on edge due to the traffic congestion, flew into a rage. He rammed Pepper's car, sending it off the road and over an embankment. Pepper was ejected from her vehicle and died from gruesome injuries at the scene.
- ▶ The Shield County District's Attorney Office is currently investigating the incident and considering prosecuting Bruce for Aggravated Assault and Deadly Conduct.



Hypothetical (Slide 2 of 2)

- ▶ Tony Stark requests all photographs related to the accident from the district attorney's office. The district attorney's office's investigation includes photographs of Pepper taken at the scene of the accident and autopsy photographs. Can the district attorney's office withhold these photographs from Tony Stark?



Section 11 of Article 49.25 of the Code of Criminal Procedure

- ▶ Protects photographs and X-rays of a body taken during an autopsy
- ▶ Photos or X-rays sought under subpoena or authority of other law, and autopsy photos and X-rays of a person who dies while in custody of law enforcement are subject to disclosure



Section 552.1085

- ▶ Protects certain sensitive crime scene images
- ▶ Applies only to closed criminal cases
- ▶ Protects photos or videos taken at a crime scene that depict a deceased person in a state of dismemberment, decapitation, or similar mutilation, or that depict the deceased's genitalia
- ▶ Next of kin must be notified of the request
- ▶ Images may be released to certain requestors, including next of kin, the media, and researchers



What You Need To Tell us When Asserting Section 552.1085

- ▶ Whether the information is part of a closed criminal case
- ▶ Whether you have notified the next of kin



Hypothetical

Can the district attorney's office withhold the photographs from Tony Stark?

- ▶ Under section 11 of article 49.25:
 - In part. The photographs of the body taken during Pepper's autopsy are confidential and must be withheld under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, the remaining photographs taken at the accident scene are not autopsy photographs, and thus, article 49.25 is not applicable.

- ▶ Under section 552.1085:
 - No. The district attorney's office is currently investigating the incident and considering charges against Bruce. Thus, the photographs are not part of a closed criminal case, and section 552.1085 does not apply.



Questions?

OAG's Open Government Hotline
(877) OPEN-TEX

OAG Website

www.texasattorneygeneral.gov/open/index.shtml