



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 16, 1998

Mr. Dennis D. Morgan
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR98-2725

Dear Mr. Morgan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119556.

Fort Bend County (the "county") received a request for copies of "all pertinent paperwork, Ft. Bend County employment records and disciplinary information concerning" a certain deputy sheriff. You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code.

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You assert that the release of the requested “records of investigation of a potential suspect . . . could unduly interfere with law enforcement and crime prevention” but do not explain how. You indicate neither the status of the investigation(s) in question nor which of the provisions of section 552.108 you consider applicable. *See* Government Code § 552.301 (governmental body seeking attorney general’s determination must “state the exceptions that apply” and state why they apply). You have not established the applicability of section 552.108 and consequently may not withhold any of the information at issue under that exception.

Section 552.101 excepts from disclosure information “considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Unlike section 552.108, withholding information which is confidential under section 552.101 is generally mandatory and the attorney general may determine that information must be withheld under the section even where the governmental body fails to establish such exception. *See* Open Records Decision No. 455 (1987); Gov’t Code § 552.352 (criminal penalties for distribution of confidential information).

Section 552.101 requires withholding, *inter alia*, material implicating common-law privacy rights. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly

intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We have attempted to mark the portions of the information you submitted which we believe constitute "personal financial information" protected by common-law privacy. *See* Open Records Decision No. 523 (1989). We have also attempted to mark medical information we believe is similarly protected. *See* Open Records Decision No. 343 (1982). (Exception of material subject to statutory protection under the Medical Practices Act, V.T.C.S article 4495b, is discussed separately below).

The information you submitted also contains criminal history record information ("CHRI"). In *Houston Chronicle Publ'g 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) (hereinafter "*Houston Chronicle*"), the court held that "Personal History and Arrest Records" were excepted from required public disclosure. These records primarily contained CHRI, such as information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle*, 531 S.W.2d at 179. Such a criminal history record is generally referred to as a "rap sheet." The court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188.

Section 552.101 also applies to information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which 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 deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). 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 the information 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 the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

We do not think it necessary to determine with certainty the provenance of all the CHRI records in the information you submitted. We believe that they are all made

confidential either by statute or common law privacy. We have attempted to mark or tab the CHRI portions of the requested information which must be withheld.

Another confidentiality statute applicable, in conjunction with section 552.101, to the information you submitted is the Medical Practices Act, V.T.C.S. article 4495b (the "MPA"), which provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have attempted to tab the portions of the information at issue here which must be withheld under the MPA.

We have also marked a record which must be withheld under section 611.002 of the Health and Safety Code. Section 611.002 makes confidential, with exceptions which do not apply here, records of evaluations by mental health professionals. Another document, which we have marked, must be withheld under section 773.091 of the Health and Safety Code, which makes Emergency Medical Service records confidential.

The submitted information also contains social security numbers of individuals not employed by the county. (County employee social security numbers are treated separately below in our discussion of section 552.117 of the Government Code). This office concluded in Open Records Decision No. 622 (1994) that amendments to the federal Social Security Act, 42 U.S.C. section 405(c)(2)(C)(vii), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

It is not apparent to us that the social security numbers at issue here were obtained or are maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the county to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(vii). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the county should ensure that the number was not obtained nor is maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990. We have attempted to mark the social security numbers in question.

Finally, some of the information at issue is subject to sections 552.117 and 552.130 of the Government Code. This office considers these provisions also to mandate withholding of the information they cover. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

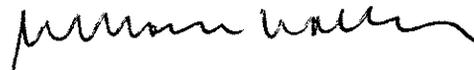
(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

The records at issue contain drivers license and license plate information that is made confidential under section 552.130. We have attempted to mark information which you must withhold pursuant to section 552.130.

Section 552.117(2) excepts peace officer home addresses, telephone numbers, social security numbers, and information that reveals the existence of family members. We have attempted to mark information which must be withheld under section 552.117(2) if the subject of the information is a peace officer. In some cases, we are uncertain whether the section 552.117 information we have marked pertains to peace officers as distinct from other, non-peace officer county employees. If the information pertains to non-peace officer county employees, then it must be withheld under section 552.117 (1) if the employee has, prior to the date of this request, opted under section 552.024 to withhold such information.

Except as noted above, the requested information must be released. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

Ref: ID# 119556

Enclosures: Submitted documents

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(w/o enclosures)