



February 8, 1999

Ms. Christine P. Lanners  
Assistant City Attorney  
Criminal Law and Police Division  
Municipal Building  
Dallas, Texas 75201

OR99-0361

Dear Ms. Lanners:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121913.

The City of Dallas Police Department (the "department") received a request for four categories of information concerning a specified investigation of the requestor and other information about department officers. Specifically, the requestor has requested "copies of the reasonable suspicion, probable cause in affidavits or information regarding any crime committed by Sergeant Harold B. Cornish, including copies and employment information regarding other peace officers." In response to the request, you submit to this office for review a representative sample of the records at issue.<sup>1</sup> You state that the department is making available to the requestor some of the information responsive to the request. You contend, however, that "the criminal history information, pictures of peace officers, juvenile information prior to 1996, medical reports, and finally [sic] confidential information file sheet" are excepted from required public disclosure by sections 552.101, 552.107, 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that the department received the open records request on October 12, 1998. You requested a decision from this office on November 11, 1998, and later on December 2, 1998 raised your claim under section 552.107. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code. Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1998) 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

receiving a request for information the governmental body wishes to withhold. When a governmental body fails to timely request a decision after receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

Because you have not presented this office with compelling reasons for withholding the requested information pursuant to sections 552.107 and 552.108, we deem these exceptions to disclosure as being waived.<sup>2</sup> However, when an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. See Open Records Decision No. 552 (1990). Since you have raised sections 552.101 and 552.119, we must consider whether some of the submitted information should be excepted from required public disclosure under these exceptions. In addition, although you have not raised any other applicable exception, based on the records at issue, we must consider whether some of the submitted information should be excepted from required public disclosure under sections 552.117 and 552.130 of the Government Code.<sup>3</sup> Therefore, we will next address the applicability of exceptions that prohibit the release of confidential information. See Gov't Code § 552.352. All of the requested information not specifically addressed below must be released to the requestor in its entirety.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have submitted information that you assert is protected from public disclosure pursuant to the "informer's privilege" as incorporated into section 552.101 of the Government Code. The informer's privilege aspect of section 552.101 allows a governmental body to withhold the identity of persons who report violations of the law to officials responsible for enforcing those laws. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); see also Open Records Decision No. 208 (1978).

In Open Records Decision No. 549 (1990), this office recognized that by protecting the informer's identity, the privilege protects the governmental body's interest in encouraging the flow of information to the government. Because this privilege exists to

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<sup>2</sup>Generally, sections 552.103, 552.107 and 552.108 do not provide a compelling demonstration to overcome the presumption of openness. See Open Records Decision Nos. 586 (1991), 551 (1990), 473 (1987), 470 (1987).

<sup>3</sup>The Office of the Attorney General will raise an exception on behalf of a governmental body when necessary to protect third-party interests. See generally Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

protect the governmental body's interest, it may be waived by the governmental body if the governmental body fails to timely seek a decision from this office. *Id.* at 6 (informer's privilege is waivable, whereas privacy rights of a third party are not). Because the department did not timely assert the informer's privilege, the information for which you assert the informer's privilege is public and may not be withheld from disclosure. Gov't Code § 552.302.

Section 552.101 also encompasses information protected by other statutes. If the information submitted for our review contains criminal history record information ("CHRI") that is generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC") it must not be publicly released. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). 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. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. Therefore, any CHRI that falls within the ambit of these state and federal regulations must be withheld from the requestor.

Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), provides:

(b) 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.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records

and information obtained from those medical records. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). Thus, unless the access provisions of the MPA provide for release of the records, both the medical records and the information in other records that was obtained from the medical records, is confidential.

We next consider your arguments against disclosure of the records involving a juvenile. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records.<sup>4</sup> Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). A portion of the submitted records pertains to juvenile conduct that occurred before January 1, 1996. Section 51.14(d) provides in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [of a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

In Open Records Decision No. 181 at 2 (1977), this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 at 4-5 (1983) (applying former Fam. Code § 51.14(d) to "police blotter" and related information). You do not indicate that the records at issue here relate to charges for which the department transferred the juvenile under section 54.02 of the Family Code<sup>5</sup> to a criminal court for prosecution, or that article 15.27 of the

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<sup>4</sup>We note that the Seventy-fourth Legislature repealed section 51.14 of the Family Code and replaced it with section 58.007 of the Family Code. The Seventy-fifth Legislature, however, amended section 58.007 once again to make juvenile law enforcement records confidential, effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon).

<sup>5</sup>Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, amended by Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), amended by Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

Code of Criminal Procedure<sup>6</sup> applies. Moreover, it does not appear that any of the exceptions to former section 51.14(d) apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). In this case, section 51.14(d) makes the submitted juvenile department records confidential. Therefore, we conclude that the department must withhold the juvenile records at issue.

Section 552.119 excepts from public disclosure a photograph of a peace officer,<sup>7</sup> that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted copies of photographs depict a peace officer and it does not appear that any of the exceptions are applicable. Therefore, unless the officer consents to the release, we agree that you may withhold the photographs under section 552.119, but only to the extent that the photographs depict the police officer in a manner that he could be identified.

We must also consider whether some of the requested information must be withheld pursuant to section 552.117 of the Government Code. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. Therefore, we conclude that the information subject to section 552.117(2) must be withheld.

Finally, we must consider whether some of the requested information must be withheld pursuant to section 552.130 of the Government Code. Section 552.130 to the Open Records Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 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

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<sup>6</sup>Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

<sup>7</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

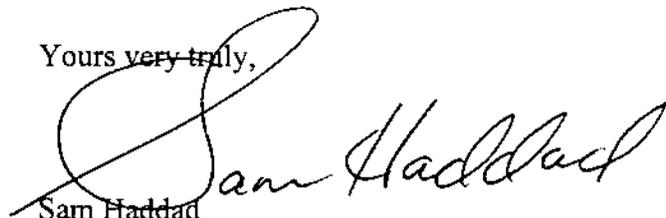
(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Section 552.130 provides that information is excepted from disclosure if it relates to a motor vehicle title or registration issued by a state agency. This type of information may be released only as provided under chapter 730 of the Transportation Code. We have marked the type of information which must be withheld pursuant to section 552.130.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref: ID# 121913

Enclosures: Submitted documents

cc: Mr. Harold Cornish  
Dallas Police Department  
2014 Main St., Rm 201  
Dallas, Texas 75201  
(w/o enclosure)