



July 6, 1999

Mr. Saul Pedregon
Office of the City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-1881

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125488.

The City of Dallas (the "city") received a request for the Internal Affairs file of a specific officer. You state that some of the responsive information has been released. You claim, however, that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Among the information submitted for our review are print-outs and an audio tape that appear to contain criminal history record information ("CHRI") generated by the Texas Crime Information Center ("TCIC"), the National Crime Information Center ("NCIC") or by the city. 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 information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled

to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI 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), and 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.

Similarly, the city's compilation of an individual's criminal history is also protected from disclosure under section 552.101. Section 552.101 encompasses an individual's constitutional and common-law privacy rights. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We, therefore, conclude that the city must withhold from required public disclosure the criminal history information gathered by the city, TCIC, and NCIC under section 552.101 of the Government Code.

Some of the CHRI is contained in documents entitled MDT Traffic (Two-Way). These documents also appear to be "radio logs" or call sheets. "Radio logs" have long been treated by this office as "basic information" which must be released absent a particular showing that information contained therein is excepted. *See e.g.* Open Records Decision No. 394 (1983); Government Code §552.108(c) ("basic information" not protected by §552.108). *See generally, 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).

We also note that some of the information contained on these sheets is protected from disclosure under section 552.130. Section 552.130, which governs the release and use of information obtained from motor vehicle records, 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; [or]

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

Gov't Code § 552.130. Thus, you must withhold license plate numbers and registration numbers pursuant to section 552.130.

You also assert that some of the information at issue consists of confidential medical records. The release of medical records is governed by section 5.08 of Vernon's Texas Civil Statutes article 4495b, the Medical Practice Act (the "MPA"), which 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.

V.T.C.S. art. 4495b, § 5.08. Section 5.08(j)(3) also 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). Medical records may be released only in accordance with these provisions of the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, §§ 5.08 (c), (j), (k). We have reviewed the documents you seek to withhold as confidential medical records. We agree that most of these documents are medical records and may be released only as provided under the MPA. We have, however, marked two documents that are not medical records and may not be withheld under this statute.

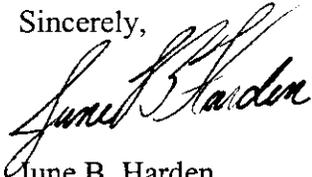
We note, however, that one of these documents is protected from disclosure by section 552.101 in conjunction with the common-law right to privacy. Information is protected by the common-law right to privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have marked the document that you must withhold under common-law privacy.

Finally, you seek to withhold a list of cellular phone numbers for members of the city police department. We assume that police officers are provided with cellular phones and phone numbers at the city's expense. Section 552.108(b)(1) excepts from disclosure "[a]n 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 . . . release would interfere with law enforcement or prosecution." You state that the release of the cellular phone numbers of law enforcement officers would "interfere with the patrol officer's ability to perform his job duties while in the field. Officers need these particular lines to take care of

their immediate needs in the field.” After reviewing your arguments, we conclude that releasing the cellular phone numbers would unduly interfere with law enforcement. Open Records Decision Nos. 636 (1995), 506 (1988). Therefore, the city may withhold the phone numbers from disclosure under section 552.108(b)(1).

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH\ch

Ref: ID# 125488

Encl: Marked documents

cc: Mr. Lennox Bower
3301 Elm Street
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(w/o enclosures)