



December 1, 2000

Mr. Robert K. Mitchell, Sheriff  
McLennan County  
5<sup>th</sup> & Washington  
Waco, Texas 76701

OR2000-4571

Dear Sheriff Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141857.

The Agriplex Drug Task Force (the “task force”) received a request for all mobile data terminal transmissions, dispatch tapes and logs, 911 tapes, call slips, photographs or videotape pertaining to on alleged offense committed by a specified individual. The requestor also wants all writings and electronic recordings pertaining to the specified individual including the categories of information made public in *Houston Chronicle Publishing Company 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). You state that you are releasing the information contained in Exhibit B. You claim that the remaining submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us that you do not have any dispatch tapes, logs, 911 tapes or terminal transmissions regarding this incident. The Public Information Act (the “Act”) only applies to information in existence. See Gov’t Code §§ 552.002, .021, .227, .351. The Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision No. 561 (1990). However, a governmental body must make a good faith effort to relate a request for information to information which it holds. *Id.* Based on your representation that no dispatch tapes, logs, 911 tapes, or terminal transmissions records exist, you need not comply with this aspect of the request.

You assert that information which identifies informants is excepted under section 552.101 in conjunction with the informer’s privilege. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by

judicial decision.” The Texas courts have recognized the informer’s privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3(1988), 208 at 1-2 (1978). You explain that Exhibit D is a confidential informant file and that disclosure of the informant’s identity would damage the efforts of law enforcement in drug intervention. Thus, we agree that the task force must withhold the information in Exhibit D, which we have marked, and references to the informant in Exhibit C which we have marked as well as any photographs of confidential informants under section 552.101 and the informer’s privilege.

You assert that the information in Exhibit C is excepted from disclosure under section 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(2) excepts from disclosure 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. Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) excepts from disclosure an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement and relates to an investigation that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that *concluded* in a final result other than a conviction or deferred adjudication. Section 552.108(a)(2) or 552.108(b)(2) cannot apply to information that pertains to a pending criminal case because a pending case has not concluded in a final result.<sup>1</sup> Because you assert that the information relates to an investigation that *has* not yet resulted in a conviction or deferred adjudication, we conclude that you have not demonstrated that the criminal investigation concluded in a *final* result other than conviction or deferred adjudication. Furthermore, you have not argued that any other provision of section 552.108 is applicable. *See generally* Gov’t Code § 552.301(e)(1)(A) (governmental body must provide written comments stating the reasons why the exceptions apply to the submitted information). Therefore, you may not withhold the information in Exhibit C under section 552.108(a)(2) or 552.108(b)(2).

However, the submitted information in Exhibit C contains criminal history record information (“CHRI”) which is excepted under section 552.101. Section 552.101 encompasses information protected by statute. CHRI generated by the National Crime Information Center (“NCIC”) and the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision

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<sup>1</sup>Section 552.108(a)(1) applies to information that pertains to a pending criminal case. *See* Gov’t Code § 552.108(a)(1) (excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime).

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 ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code § 411.083.*

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI 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. Thus, the task force must withhold the marked CHRI in Exhibit C.

We also note that the submitted information contains driver's license numbers, license plate numbers, and vehicle registration information. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked driver's license numbers, license plate numbers, and vehicle registration information under section 552.130(a) of the Government Code.

The submitted information also contains a social security number. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994).* These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the social security number was obtained or maintained by the task force 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 task force to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the task force, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the task force should ensure that this number was not obtained or maintained by the task force pursuant to any provision of law enacted on or after October 1, 1990.

We note that one of the documents that must be released appears to be copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In conclusion, you must withhold the marked information in Exhibits C and D under section 552.101 in conjunction with the informer's privilege. Further, you must withhold the marked CHRI in Exhibit C under section 552.101 and the marked information under section 552.130. You must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

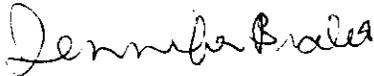
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\er

Ref: ID# 141857

Encl: Submitted documents

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