



January 4, 2001

Mr. B.J. "Beni" Hemmeline, Civil Chief
Lubbock County
904 Broadway, Second Floor
Lubbock, Texas 79401

OR2001-0023

Dear Mr. Hemmeline:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142853.

Lubbock County (the "county") received a request for information pertaining to a named individual. Specifically, the requestor seeks the following types of documents pertaining to the individual:

- 1) Arrest records;
- 2) Criminal complaints;
- 3) Law enforcement investigations;
- 4) Criminal pleadings;
- 5) Lubbock County Jail files;
- 6) Lubbock County Sheriff's Department files; and
- 7) Lubbock County District Attorney files.

In addition, the requestor seeks a computer print-out showing all real and personal properties in which there is a recorded history of the individual's ownership. You explain that no such computer print-out exists. Because the Public Information Act does not require a governmental body to create or prepare new information, the county has no obligation to release the requested print-out. *See* Open Records Decision Nos. 572 (1990), 342 (1982).¹

¹Additionally, the Act does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, if a request for public information requires programming or manipulation of data or the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, a governmental body is required to provide the requestor with a written statement describing the form in which the information is available, a description of what would be required to provide the information in the requested form, and a statement of the estimated cost and time to provide the information in the requested form. Gov't Code § 552.231(a), (b). Once the governmental body provides the statement to the requestor, the governmental body has no obligation to provide the requested information in the requested form until the requestor responds to the governmental body in writing. *Id.* § 552.231(d); *see also* Gov't Code § 552.228 (stating the correct procedures for providing a suitable copy of information to a requestor who seeks information in electronic form).

You also state that the county has released "jail cards" which indicate when the individual was incarcerated in county jail. Further, the county has provided the requestor with cause numbers of criminal cases involving the named individual so that the requestor may obtain the requested criminal complaints and pleadings from the district or county clerk. As for the remainder of the requested information, you state that it is excepted under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, we address whether the requested information is confidential under common law privacy as encompassed by section 552.101. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses common law privacy. 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). In this instance, while it is not entirely clear, it seems that the requestor is an attorney who represents the named individual. Assuming that this is the case, the requested information is not confidential under section 552.101 in conjunction with common law privacy. *See Gov't Code § 552.023* (a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests). However, if the requestor is not the named individual's authorized representative, then to the extent that the county has records responsive to the request in which the named individual is a possible suspect, the county must withhold this information under section 552.101 in conjunction with common law privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

However, the submitted information at issue contains criminal history information which is confidential under section 552.101 in conjunction with chapter 411 of the Government Code. Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statute. 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 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 Texas Department of Public Safety (the "department") maintains, except that the department 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 the department, 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 the department 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. The information at issue contains confidential CHRI the release of which is governed by chapter 411. Therefore, the county may not release the CHRI to the requestor under section 552.101. We have marked the confidential CHRI.

Next, we note that the submitted information that is at issue includes several documents that appear to have been filed with a court. Documents filed with a court are generally considered public. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Moreover, information that is also contained in a public court record is not subject to the Public Information Act's discretionary exceptions. Gov't Code § 552.022(a)(17). Therefore, the county must release all responsive documents that have been filed with a court. We have marked the types of documents that appear to have been filed with a court.

As to the remainder of the information at issue, we are somewhat uncertain as to its scope. We note that several of the pages that you have submitted for our review are duplicates of the jail cards which the county has already released to the requestor. Therefore, we do not consider these pages to be at issue here. The rest of the information at issue seems to consist of arrest and custodial records. You argue that these records are excepted under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. We understand you to argue that these records pertain to criminal matters that concluded in a result other than conviction or deferred adjudication. Based on this representation, we agree that section 552.108(a)(2) is applicable to these records. Although section 552.108(a)(2) authorizes the county to withhold these records from disclosure, you may choose to release all or part of these records that is not otherwise confidential by law. *See* Gov't Code § 552.007.

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).

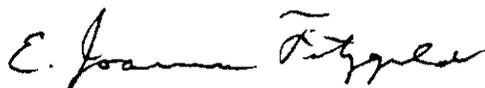
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 142853

Encl: Submitted documents

cc: Ms. Rebecca Hamilton
Sumner & Schick
2305 Cedar Springs Road, Suite 150
Dallas, Texas 75201
(w/o enclosures)