



December 19, 2001

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2001-6001

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156308.

The Dallas County District Attorney's Office (the "district attorney") received eight requests for information relating to complaints filed with the district attorney's Office of Public Integrity.¹ You inform this office that you will provide the requestor with information relating to complaints that resulted in either a conviction or a deferred adjudication. You claim that information relating to complaints that did not result in a conviction or a deferred adjudication is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.² We also received correspondence from the requestor.³

¹These eight requests are designated as "DA2," "DA3," "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9." Each of the eight requests is applicable to a specified time interval during 1999, 2000, and 2001. Each of the requests states that the requestor "would like to obtain a list of, or failing this, to review the complete files of all complaints (including the disposition thereof)[.]"

²We assume that the submitted "representative portions" of responsive information are truly representative of that information as a whole. This letter ruling neither reaches nor authorizes the district attorney to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³See Gov't Code § 552.304 (providing that any interested person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address your representation that the submitted representative sample documents include grand jury information. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Gov't Code § 552.003(1)(B); Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* You do not establish, nor is this office otherwise able to determine, the extent to which the submitted information was obtained pursuant to a grand jury subpoena or at the direction of the grand jury. Nevertheless, insofar as information responsive to these eight requests is in the custody of the district attorney as agent of the grand jury, such information is not subject to disclosure under chapter 552. *Id.* at 4. To the extent, however, that the responsive information was not obtained pursuant to a grand jury subpoena or at the direction of the grand jury, it is subject to disclosure under chapter 552 and must be released, unless an exception to disclosure is shown to be applicable.

Next, we address the timeliness of your request for a decision with regard to the DA3 request. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request." Section 552.301 further provides as follows:

(e) A governmental body that requests an attorney general decision under Subsection (a) must . . . not later than the 15th business day after the date of receiving the written request:

(1) submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information;

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested.

Gov't Code § 552.301(e)(1)(A)-(D). Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

You inform this office that you received the DA3 request on October 4, 2001. Therefore, with respect to the DA3 request, the district attorney had until and including October 17, 2001, in which to comply with section 552.301(b) and until and including October 24, 2001, to comply with section 552.301(e). You requested our decision with respect to the DA3 request by letter dated November 6, 2001. Thus, with respect to the DA3 request, the district attorney did not comply with section 552.301. Consequently, any information that is responsive to the DA3 request is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold that information. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).* Sections 552.108 and 552.111 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See Open Records Decision Nos. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111), 177 (1977) (governmental body may waive statutory predecessor to section 552.108).* Thus, a claim under section 552.111 is not a compelling reason for non-disclosure under section 552.302. The need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. Although you raise section 552.108, your claim under this exception does not constitute a compelling reason to withhold the information in question. *See Open Records Decision No. 586 at 3 (1991) (need of a governmental body, other than the one that failed to timely request a decision, may in appropriate circumstances be a compelling reason for non-disclosure).*

We note, however, that the submitted representative sample documents contain information that is confidential by law or that implicates the interests of third parties. Based on your representation that the submitted documents are representative of the information that is responsive to the DA3 request, we find that a compelling reason exists to withhold some of this information under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.

We first note that the representative sample documents include information, the release of which is governed by provisions of law outside chapter 552 of the Government Code.⁴ Included among the submitted documents is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the three items of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the district attorney with two of the three items of information. Thus, you must withhold the accident report under section 550.065(b).

The representative sample documents also include search warrant affidavits. Article 18.01 of the Code of Criminal Procedure provides in part:

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b).⁵ Therefore, in the case of a search warrant that was executed, the district attorney must release the supporting search warrant affidavit under article 18.01(b).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. Criminal history

⁴Our discussion of these provisions of law also is applicable to the information that is responsive to the seven requests designated as "DA2," "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9."

⁵Generally, exceptions to public disclosure under chapter 552 of the Government Code are not applicable to information that another statute expressly makes public. *See* Open Records Decision No. 623 at 3 (1994).

record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. The dissemination of CHRI obtained from the NCIC network is governed by federal law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. 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 CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety (the "DPS") or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code.

The disclosure of medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in relevant part:

- (a) a communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See id.* §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We have marked information that is governed by the MPA. This type of information may be released only if the MPA permits the district attorney to do so.

Section 58.007 of the Family Code governs law enforcement records and files that relate to juvenile offenders. This section provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) encompasses records of juvenile conduct that occurred on or after September 1, 1997.⁶ The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.⁷ We have marked the type of information that you must withhold under section 58.007(c) of the Family Code.

The submitted documents also contain fingerprint information that section 559.003 of the Government Code makes confidential. The Seventy-seventh Legislature recently added sections 559.001, 559.002, and 559.003 to the Government Code, effective September 1, 2001. *See* Act of May 24, 2001, 77th Leg., R.S., H.B. 678, § 2 (to be codified as Gov't Code §§ 559.001, .002, and .003). These new sections provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

⁶*See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996).

⁷*See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code).

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Section 559.002 does not appear to permit the disclosure of the submitted fingerprint information to the requestor. Therefore, you must withhold the marked fingerprint information under section 559.003 of the Government Code.

Chapter 301 of the Occupations Code codifies the Nursing Practice Act. Section 301.466 makes confidential “[a] complaint and investigation concerning a registered nurse under this subchapter and all information and material compiled by the [Board of Nurse Examiners] in connection with the complaint and investigation[.]” Occ. Code § 301.466(a). We have marked information that appears to have been submitted to the Board of Nurse Examiners. We assume that the district attorney obtained this information from the board. *See* Occ. Code § 301.466(b)(4) (permitting board to disclose confidential information to a law enforcement agency). Based on this assumption, we conclude that you must withhold the marked information under section 301.466 of the Occupations Code. *See also* Open Records Decision No. 661 at 3 (1999) (stating that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies).

Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. *See* Occ. Code § 1703.001. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. The requestor is not a person to whom section 1703.306 grants access to polygraph information. We have marked the type of information that you must withhold under section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). We have marked the types of information that must be withheld under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Common-law privacy also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision No. 659 at 4-5 (1999); see also Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the types of information that the district attorney must withhold under section 552.101 in conjunction with common-law privacy.

The submitted documents also contain information that is protected by section 552.117(2) of the Government Code. You must withhold the current and former home address, home telephone number, and social security number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complied with section 552.024. We have marked information that must be withheld under section 552.117(2).

A social security number also may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if that information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the district attorney obtained or maintains any social security number contained in the submitted documents 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 district attorney to obtain or maintain such a social security number. Therefore, we have no basis for concluding that any social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number, the district attorney should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Government Code is applicable to motor vehicle record information. This exception provides in part:

- (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.

Gov't Code § 552.130(a). The district attorney must withhold Texas driver's license, license plate, and vehicle identification numbers in accordance with section 552.130.

The representative sample documents also contain account number information. The Seventy-seventh Legislature added section 552.136 to chapter 552 of the Government Code.⁸ Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides in relevant part:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

⁸The Legislature also enacted two other bills that add a section 552.136 to chapter 552. House Bill 2589 makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., ch. 545, § 5, 2001 Tex. Sess. Law Serv. 974, 975 (Vernon) (to be codified as Gov't Code § 552.136). Senate Bill 15 makes information maintained by family violence shelter centers confidential. *See* Act of May 3, 2001, 77th Leg., R.S., ch. 143, § 1, 2001 Tex. Sess. Law Serv. 279 (Vernon) (to be codified as Gov't Code § 552.136). Senate Bill 694 also enacted the same language as House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code. *See* Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (to be codified as Gov't Code § 552.137).

Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (to be codified as Gov't Code § 552.136). We have marked the type of information that the district attorney must withhold under section 552.136.

In summary, the information that is responsive to the DA3 request may not be withheld under sections 552.108 or 552.111. However, the district attorney must withhold any responsive information that is excepted from disclosure under sections 552.101, 552.117, 552.130, or 552.136 of the Government Code, as previously discussed. Any other information that is responsive to the DA3 request must be released.

Next, we address the seven requests designated as "DA2," "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9." You advise us of the time and effort that your office has expended in connection with these requests for information. You describe "the enormity of the task" of reviewing and copying responsive information. Section 552.222(b) of the Government Code provides that "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]" Thus, on receipt of a broad request for information, the governmental body may advise the requestor of the types of documents that are available, so that the requestor may narrow or clarify the request if he or she chooses to do so. *See* Open Records Decision No. 663 at 5 (1999). In the event, however, that the requestor elects not to narrow a request, the governmental body must either release all responsive information that it holds or controls or ask for an attorney general decision under section 552.301. Administrative expense and inconvenience are not grounds for non-compliance with a request for information under chapter 552 of the Government Code. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 663 at 4 (1999).

We also must consider the timeliness of your request for a decision with respect to the "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9" requests. The requestor asserts that these six requests were submitted by facsimile to the district attorney on the dates reflected on these requests. You state, however, that the district attorney first received these six requests from this office on October 23, 2001. You represent to this office that neither you nor the district attorney received any of these six requests from the requestor himself.⁹ Whether you or the district attorney received any of these six requests prior to October 23, 2001, presents a fact issue. This office cannot resolve disputes of fact in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Therefore, based on your representations and the related documentation, we find that the district attorney first received the "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9" requests on October 23, 2001.

⁹We note that under section 552.301(c), a request submitted by facsimile or electronic mail must be sent to the officer for public information or a person designated by the officer to accept such requests.

Under section 552.301(b), the district attorney then had until and including November 6, 2001, in which to request our decision with respect to these six requests. You requested our decision with regard to these six requests by letter postmarked November 6, 2001. Thus, your request for this decision with regard to these six requests was timely under section 552.301(b). Moreover, you state that the representative sample information that you submitted in requesting a decision with regard to the "DA2" request also is representative of the information that is responsive to the "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9" requests. Therefore, we find that you have timely complied with section 552.301(e)(1)(D) with respect to the "DA2" request and the six requests designated as "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9." Accordingly, we will consider your claim under section 552.108 with respect to the information that is responsive to these requests.

You claim that this information is excepted from disclosure under section 552.108(a)(2) and (b)(2). Section 552.108(a)(2) excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]" Section 552.108(b)(2) protects "[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 . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body must sufficiently explain, if the information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(a)(2) protects information relating to a concluded case that did not result in a conviction or a deferred adjudication. You indicate that all of the information at issue relates to closed Public Integrity complaint files that did not result in a conviction or deferred adjudication. Based on your representations and our review of the submitted documents, we conclude that section 552.108(a)(2) is applicable to information contained in closed Public Integrity complaint files.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be 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). Basic front-page information may be withheld from disclosure only if special circumstances are shown to exist. In this instance, you seek to withhold the identities of persons who were the subject of unsubstantiated Public Integrity complaints and their alleged offenses. You claim that the district attorney should be permitted to withhold this information under section 552.108(a)(2) and (b)(2). You further contend that this information is protected by constitutional and common law privacy under section 552.101.

First, we consider your arguments under section 552.108. You contend that the release of information relating to unsubstantiated complaints would interfere with the detection, investigation, or prosecution of crime. We initially note that the identity of a suspect who was not arrested does not constitute basic information. Thus, you may withhold that information under section 552.108(a)(2). See Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). However, you may not withhold basic information, which includes the identities of arrested individuals and descriptions of offenses, under section 552.108. See Gov't Code § 552.108(c) (providing that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime").

You also seek to withhold the identities of individuals who have been arrested under section 552.101 in conjunction with common-law and constitutional privacy. Information is protected by the common-law right of privacy under section 552.101 when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Constitutional privacy under section 552.101 protects two kinds of interests. See Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); see also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Open Records Decision No. 455 at 3-7 (1987); see also *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See Open Records Decision No. 455 at 6-7 (1987); see also *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), reh'g denied, 770 F.2d 1081 (1985), cert. denied, 474 U.S. 1062 (1986). This aspect of constitutional privacy requires a balancing of the individual's privacy interest against the public's interest in the information. See Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (1987) (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

You contend that the disclosure of the identities of individuals who have been the subjects of unfounded complaints would be highly objectionable. You also claim that there is no legitimate interest in the disclosure of such information. We have considered your arguments. We conclude, however, that you have not shown that the identity of an arrested individual comes within one of the constitutional zones of privacy. Likewise, you have not shown that this information involves the most intimate aspects of human affairs. Furthermore, we find that the public has a legitimate interest in information that relates to alleged public integrity offenses that have resulted in arrests. Thus, you have not shown that the identities of arrested individuals are protected by common-law or constitutional privacy under section 552.101. See also Open Records Decision Nos. 484 (1987) (interest in

knowing how police departments resolve complaints against officers ordinarily outweighs officers' privacy interests); 473 (1987) (unfavorable evaluation is not highly intimate or embarrassing fact about public employee's personal affairs); 470 (1987) (public employee's job performance generally does not constitute private affairs); 444 (1986) (public has obvious interest in information about qualifications and performances of public employees), 405 at 2 (1983) (information relating to manner in which public employee performed his or her job cannot be said to be of minimal public interest). Furthermore, false light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Thus, information may not be withheld from the public merely because its release might place an individual in a false light. *See Open Records Decision No. 579 (1990).*

We note, however, that one of the submitted complaint files involves an alleged sexual assault. In Open Records Decision No. 339 (1982), this office concluded that a sexual assault victim has a common law privacy interest that prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment was highly intimate or embarrassing information in which public did not have legitimate interest); Open Records Decision No. 393 at 2 (1983) (common law privacy protects information that identifies or would tend to identify alleged sexual assault victim). The district attorney must withhold the identity of the alleged sexual assault victim under section 552.101. We have marked that information. The remaining basic information must be released.

In summary, responsive information held by the district attorney as agent of the grand jury is not subject to disclosure under chapter 552 of the Government Code. To the extent that specific provisions of law outside chapter 552 of the Government Code govern the release of any of the remaining representative sample information, such information may be released only in accordance with such law. With respect to the DA3 request, the district attorney must withhold the remaining responsive information that is excepted from disclosure under sections 552.101, 552.117, 552.130, or 552.136. Any other information that is responsive to the DA3 request must be released. The district attorney may withhold the remaining information that is responsive to the "DA2," "DA4," "DA5," "DA6," "DA7," "DA8," and "DA9" requests under section 552.108(a)(2) of the Government Code. The district attorney must release basic information, except for the alleged sexual assault victim's identity, which must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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).

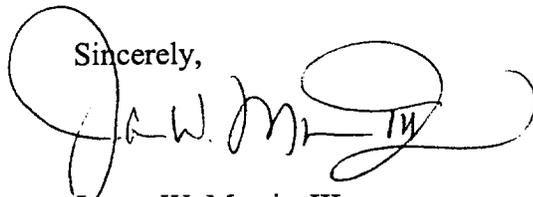
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 156308

Enc: Marked documents

c: Mr. J. Umoren
c/o Law Offices of Reginald Carpenter
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(w/o enclosures)