



January 7, 2002

Mr. Joe Jackson  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2002-0100

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156948.

The College Station Police Department (the "department") received a request for fourteen types of information relating to complaints filed against a particular police officer and the officer's employment history with the department. You state that most of this information is being released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

You claim that Exhibit 21 is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code. Federal law governs the dissemination of CHRI obtained from the NCIC network. 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). Any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Any CHRI obtained from the Texas Department of Public Safety (the "DPS") or another criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. The definition of CHRI does not encompass driving record information maintained by the DPS. See Gov't Code § 411.082(2)(B). Furthermore, where a governmental entity has compiled information that lists an individual as a criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual's right to 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).<sup>1</sup> Thus, to the extent that the submitted documents contain any information that is confidential under the federal regulations or subchapter F of chapter 411 of the Government Code, or that is private under *Reporters Committee*, the department must withhold such information under section 552.101 of the Government Code.

A social security number may be confidential 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 a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). You inform this office that City Ordinance No. 2436, adopted February 24, 2000, relates to the retention and disposition of police department records. You assert that this ordinance constitutes a provision of law enacted on or after October 1, 1990, for purposes of the federal statute. We have considered your arguments and reviewed the documentation you submitted as Exhibits E and F. We find, however, that Ordinance No. 2436 is not specifically applicable to social security numbers. Furthermore, a city ordinance cannot operate to make information confidential that is subject to chapter 552 of the Government Code. See Open Records Decision No. 594 at 3 (1991) (citing *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982), cert. denied, 459 U.S. 1087 (1982)); see also *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (absent specific legislative authority, governmental body may not bring information within section 552.101 by promulgating rule designating information as confidential). Accordingly, Ordinance No. 2436 does not constitute a provision of law enacted on or after October 1, 1990, for purposes of section

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<sup>1</sup>Section 552.101 of the Government Code also encompasses the common-law right of privacy. Information must be withheld 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).

405(c)(2)(C)(viii)(I) of the Social Security Act. You have cited no other law, nor are we aware of any other law, that authorizes the department to obtain or maintain a social security number. It therefore is not apparent to this office that the department obtained or maintains the social security number at issue here pursuant to any provision of law enacted on or after October 1, 1990. Thus, we have no basis for concluding that this social security number 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 the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing this social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You also raise section 552.108 of the Government Code. Section 552.108 excepts from required public disclosure “[i]nformation 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[.]” Gov’t Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that 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).

You state that Exhibit 19 relates to a pending prosecution. Your representation is confirmed by the submitted letter from an assistant county attorney. Based on your representation and the assistant county attorney’s letter, we find that the release of Exhibit 19 would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (law enforcement exception may be invoked by any proper custodian of information relating to an incident allegedly involving criminal conduct that remains under active investigation or prosecution). You also inform us that the department has released basic front-page information in accordance with *Houston Chronicle*. *See* Gov’t Code § 552.108(c); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed to be public under *Houston Chronicle*). We therefore conclude that the department may withhold Exhibit 19 under section 552.108(a)(1).

Section 552.130 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[.]” Gov’t Code § 552.130(a)(1). We have marked the Texas driver’s license information that the department must withhold under section 552.130.

In summary, criminal history record information obtained from the NCIC or TCIC networks is confidential under federal law and subchapter F of chapter 411 of the Government Code. Criminal history information compiled by a governmental entity is private under *Reporters Committee*. To the extent that the submitted documents contain either of these types of information, the department must withhold such information under section 552.101 of the Government Code. A social security number may be confidential under section 552.101 in conjunction with federal law. The department may withhold Exhibit 19 under section 552.108 of the Government Code. The Texas driver's license information must be withheld under section 552.130. The remaining information must be released.

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).

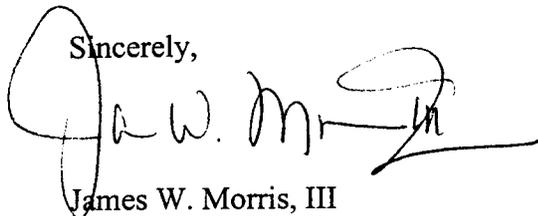
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

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

JWM/sdk

Ref: ID# 156948

Enc: Marked documents

c: Mr. Jim W. James  
Law Office of Jim James  
P.O. Box 1146  
Bryan, Texas 77806  
(w/o enclosures)