



January 31, 2002

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

OR2002-0464

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# 158002.

The City of College Station Police Department (the "department") received a request for the service record of a named police officer, including all complaints filed against the officer. You indicate that the department has released some of the responsive information. However, in your correspondence dated November 16, 2001, you claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your arguments 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 section encompasses information protected by other statutes. You contend that several social security numbers contained in the submitted information are confidential under the federal Social Security Act. A social security number may be confidential 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), 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 indicate that the City of College Station has adopted ordinances generally relating to the retention and disposition of city records. You assert that these ordinances constitute provisions of law enacted on or after October 1, 1990, under the Social Security Act. We find, however, that these ordinances are not specifically applicable to a social

security number. 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 *Indus. Found. v. Tex. 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, the ordinances do not constitute provisions of law enacted on or after October 1, 1990, for the purpose of section 405(c)(2)(C)(viii)(I). You have cited no other law, nor are we aware of any other law, that authorizes the department to obtain or maintain social security numbers. It therefore is not apparent to this office that the department obtained or maintains the social security numbers at issue here pursuant to any provision of law enacted on or after October 1, 1990. Thus, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are 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 these social security numbers, the department should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You also contend that portions of the submitted information constitute confidential criminal history record information ("CHRI"). Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. 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."), (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."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, 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). You contend that portions of the submitted information consist of confidential criminal history information. Based on your arguments, and our review of the submitted information, we agree that some of the information submitted for our review is criminal history record information excepted from required public disclosure by section 552.101 of the Government Code. See Gov't Code §§ 411.084, .087.

Next, you argue that parts of the requested information are confidential under section 1703.306 of the Occupations Code. Section 1703.306 governs the release of polygraph information and provides:

(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 control 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 board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306. This provision prohibits the release of polygraph information to anyone other than those individuals listed in subsection (a). In this instance, it does not appear that the requestor has a right of access to the polygraph reports. Accordingly, we have marked the information that is confidential pursuant to section 1703.306 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

We note that the submitted documents also contain information that is confidential under section 1701.306 of the Occupations Code. Section 1701.306 of the Occupations Code provides, in relevant part, as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

- (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306. The submitted documents contain a "Declaration of Medical Condition" and a "Declaration of Psychological and Emotional Health" that are confidential pursuant to section 1701.306 of the Occupations Code. We have marked these documents, which must be withheld under section 552.101 of the Government Code.

Furthermore, the submitted documents contain fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. These provisions of the Government Code 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.

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.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold the fingerprints, which we have marked, under section 552.101 in conjunction with section 559.003 of the Government Code.

You contend that portions of the submitted information are confidential under common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses as well as personal financial information not relating to the financial transaction between an individual and a governmental body are protected under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked some medical and personal financial information that is confidential under common-law privacy and must be withheld under section 552.101 of the Government Code.

Next, you argue that information from four police reports is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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

Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You state that Exhibits 205-206 and 299-305 relate to inactive but pending criminal investigations. Based upon this representation, we conclude that the release of Exhibits 205-206 and 299-305 would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases). Therefore, with the exception of basic information, which you indicate you have released, you may withhold Exhibits 205-206 and 299-305 from disclosure under section 552.108(a)(1). You further state that Exhibits 296-297 and 318-321 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that, with the exception of basic information, which you indicate you have released, you may withhold Exhibits 296-297 and 318-321 under section 552.108(a)(2).

You further contend that portions of the submitted information are excepted from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) provides:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

. . . .

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

Thus, the department must withhold those portions of the submitted documents that reveal a licensed peace officer's home address, home telephone number, social security number, and family member information. *See* Open Records Decision No. 670 at 5-6 (2001) (A governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies"). We have marked the information that must be withheld under section 552.117(2).

Finally, you argue that driver's license, license plate, and vehicle identification information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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[.]

This office recently issued three previous determinations—Open Records Letter Nos. 2002-0053 (2002), 2001-5847 (2001), 2001-5574 (2001)—allowing the department to withhold from public disclosure Texas driver's license numbers, license plate numbers, and vehicle identification numbers pursuant to section 552.130 without the need for requesting a decision from this office. Because the facts and circumstances surrounding those rulings do not appear to have changed, we find that you may rely on those rulings to withhold the Texas driver's license numbers, license plate numbers, and vehicle identification numbers contained in the submitted information. *See* Open Records Decision No. 673 (2001). You must also withhold the remaining Texas driver's license information and license plate information that we have marked under section 552.130.

In summary, the social security numbers contained in the submitted information may be confidential under section 552.101 in conjunction with federal law. The department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the marked "Declaration of Medical Condition" and "Declaration of Psychological and Emotional Health" under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The department must also withhold the marked fingerprints under section 552.101 in conjunction with section 559.003 of the Government Code. The department must withhold the marked medical information

and personal financial information under section 552.101 pursuant to common-law privacy. The department may withhold Exhibits 205-206, 299-305, 296-297, and 318-321 under section 552.108 of the Government Code. The department must withhold those portions of the submitted documents that reveal a licensed peace officer's home address, home telephone number, social security number, and family member information under section 552.117(2) of the Government Code. Finally, the department must withhold the marked Texas driver's license information, license plate information, and vehicle identification number under section 552.130 of the Government Code. The department must release the remainder of the submitted information.¹

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).

¹Based on our finding, we need not reach your remaining arguments.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 158002

Enc. Submitted documents

c: Mr. Juan Gonzalez, Jr.
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(w/o enclosures)