



February 7, 2002

Ms. Denise G. Obinegbo
Open Records Specialist
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2002-0577

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158315.

The Richardson Police Department (the "department") received a request for police reports on certain apartments in a specified apartment complex from June 2001 through November 12, 2001. You advise that the department is releasing some of the requested information to the requestor, including all call cards and most of police report number 01-068094. 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 claim and have reviewed the submitted information.

As an initial matter, we note that you have represented to the requestor that report number 01-093682 was generated solely for statistical purposes. However, you have submitted documents for this report number that are responsive to the request for information. Because you do not claim that this information is excepted from disclosure, you must release these documents to the requestor. *See Gov't Code §§ 552.301, .302.*

Next, we note that "information that is also contained in a court record" is subject to required public disclosure under section 552.022(a)(17) of the Government Code. Section 552.022(a) of the Government Code provides that this information is not excepted from required disclosure under the Act unless the information is expressly confidential under other law. Section 552.108 is a discretionary exception which does not constitute other law that makes information subject to section 552.022(a)(17) confidential. Therefore, the submitted court documents must be released.

You argue that police report numbers 01-070868, 01-078073, 01-091712, 01-093676, and 01-078553 are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) states that 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 release of the information would interfere with the detection, investigation, or prosecution of crime." You inform us that police report numbers 01-070868, 01-078073, 01-091712, and 01-093676 pertain to pending cases. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* You may withhold these reports under section 552.108(a)(1). Section 552.108(a)(2) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required disclosure 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." You represent that the information in police report number 01-078553 pertains to an investigation that did not result in conviction or deferred adjudication. Therefore, you may withhold police report number 01-078553 under section 552.108(a)(2). While section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime under section 552.108(c), we find that you have released or will release basic information relating to these police reports.

Social security numbers contained in police report number 01-068094 may be excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A social security number may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it 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 (1994)*. Therefore, prior to releasing the social security numbers in this report, you should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 also encompasses the doctrine of common law privacy. For information to be protected from public disclosure pursuant to the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; *Open Records Decision No. 611 at 1 (1992)*. We have marked the private information that you must withhold in report number 01-068094 pursuant to section 552.101.

The report contains additional information subject to section 552.101. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by 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 No. 565 (1990); *see* 28 C.F.R. § 20.21(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”). 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. Accordingly, we have marked the CHRI that must be withheld under section 552.101 of the Government Code.

Further, section 552.130 of the Government Code prohibits the release of information that relates to a driver’s license or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the department must withhold the Texas driver’s license and license plate numbers in police report number 01-068094.

In summary, you may withhold police report numbers 01-070868, 01-078073, 01-091712, and 01-093676 pursuant to section 552.108(a)(1) and report number 01-078553 pursuant to section 552.108(a)(2), with the exception of the marked court documents. Social security numbers contained in police report number 01-068094 must be withheld under section 552.101 if they were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You must also withhold the private information and criminal history information we have marked in this report pursuant to section 552.101. Finally, the department must withhold the Texas driver’s license and license plate numbers contained in report number 01-068094 under section 552.130. The department must release the remaining requested 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 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/sdk

Ref: ID# 158315

Enc. Submitted documents

c: Ms. Rhonda Davis
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(w/o enclosures)