



February 14, 2002

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2002-0703

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158750.

The City of Midland (the "city") received a request for records related to case number 0110310047. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130¹ of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 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). You state that the requested offense report relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report 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).

¹Although you claim that Transportation Code section 731.002 excepts certain information from disclosure, we note that the correct exception is section 552.130 of the Government Code.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, including the identities of the complainants, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information in Exhibit B from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.²

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). 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. A portion of the information submitted for our review is CHRI generated by TCIC and NCIC. Accordingly, the information that we have marked in Exhibit C is excepted from required public disclosure by section 552.101 of the Government Code.

This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy as encompassed by section 552.101

²Because section 552.108 is dispositive, we need not address the applicability of your other claimed exceptions for the information submitted in Exhibit B.

of the Government Code. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11. We find no indication that the financial information at issue relates to a transaction between the named individual and a governmental body. We have accordingly marked the financial information for redaction and determine that this information must be withheld pursuant to section 552.101 in conjunction with the common-law right to privacy.

The submitted information contains information which 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[.]

The city must withhold the marked information under section 552.130.

Finally, we note that the submitted information contains account numbers which are protected by section 552.136 of the Government Code. The Seventy-seventh Legislature added section 552.136 to chapter 552 of the Government Code.³ This newly enacted exception to public disclosure makes certain account number information confidential. 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.

³The 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) (codified at 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) (codified at 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) (codified at Gov't Code § 552.137).

(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.

Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (codified at Gov't Code § 552.136). We have marked the account number information that the city must withhold under section 552.136 of the Government Code.

In summary, with the exception of basic information, which must be released, the information in Exhibit B may be withheld under section 552.108 of the Government Code. The information that we have marked in Exhibit C is excepted from required public disclosure by section 552.101. Personal financial information in Exhibit D must be withheld pursuant to section 552.101 in conjunction with the common-law right to privacy. Motor vehicle information must be withheld from disclosure under section 552.130. The city must withhold account numbers under section 552.136.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 158750

Enc. Submitted documents

c: Ms. Elena Marion
Fairfield Inn
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Midland, Texas 79705
(w/o enclosures)