



May 22, 2002

Mr. James L. Dougherty, Jr.  
Cole & Dougherty  
5120 Bayard  
Houston, Texas 77006

OR2002-2751

Dear Mr. Dougherty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163310.

The City of Arcola (the "city"), which you represent, received requests for (1) records pertaining to city council meetings since June 5, 2001, regarding a named police officer, (2) records filled out by a named police officer regarding extra jobs performed by the officer while an employee of the city police department, (3) all records from the personnel file of a named police officer, and (4) the city police department's policies on the issuance of a policy manual to new employees. You state that the city is releasing most of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Therefore, the city must withhold the responsive certified agendas of closed meetings under section 552.101 in conjunction with section 551.104(c) of the Government Code.

You also contend that the information contained in Tab 1 is confidential and excepted from disclosure under 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). 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. The information in Tab 1 is CHRI generated by TCIC and NCIC. Accordingly, the information in Tab 1 is excepted from required public disclosure by section 552.101 of the Government Code.

We next address your contention that the information in Tab 3 is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. You state that the information in Tab 3 consists of an e-mail and a memorandum from the city attorney to city officials. Based on your representation and our review of the submitted information, we agree that the information contained in Tab 3 consists of attorney advice and opinion and may be withheld under section 552.107.

Finally, you contend that the information in Tab 2 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) provides as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

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

....

(b) An 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 is excepted from [public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

....

You state that the documents in Tab 2 relate to an "active criminal prosecution" being conducted by the Harris County District Attorney's Office and are therefore presumptively excepted from disclosure under section 552.108. When an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the investigation or prosecution. *See, e.g.,* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). However, you have not informed this office that the information in Tab 2 has been forwarded to the Harris County District Attorney, nor have you represented that the Harris County District Attorney has requested that this information be withheld. Therefore, we find you have not demonstrated that the information in Tab 2 is excepted from disclosure under section 552.108, and the city may not withhold the information in Tab 2 under section 552.108.

Nevertheless, we note that some of the information in Tab 2 is 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. *Id.* This office has found that personal financial information not involving a transaction with a governmental body can be confidential under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked some personal financial information contained in Tab 2 that must be withheld under common-law privacy and section 552.101 of the Government Code.

We also note that Tab 2 contains information excepted from disclosure under section 552.117 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 city 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).

Tab 2 also contains information excepted 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 Texas driver's license number contained in Tab 2 under section 552.130.

Finally, we note that Tab 2 contains an account number that must be withheld under section 552.136 of the Government Code. Section 552.136 provides, in relevant part:

(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 . . . .

(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.

Gov't Code § 552.136. We have marked the account number in the submitted information that must be withheld under section 552.136.

In summary, the city must withhold the responsive certified agendas of closed meetings under section 551.104 of the Government Code. The city must also withhold Tab 1 under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and title 28, part 20 of the Code of Federal Regulations. The city may withhold Tab 3 from disclosure under section 552.107 of the Government Code. Finally, the city must withhold the information in Tab 2 we have marked under sections 552.117(2), 552.130, and 552.136 of the Government Code. The city must release the remainder of the submitted 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,

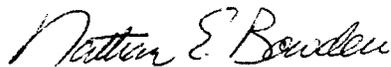
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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# 163310

Enc: Submitted documents

c: Mr. Rick DeToto  
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(w/o enclosures)