



October 3, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-5586

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170149.

The City of Austin (the "city") received a request for information relating to the reasons the requestor was not hired for a position with the Austin Police Department (the "department"), including the results of the requestor's background history investigation. You indicate that you will release to the requestor some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information contains information which generally must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law and "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). As you assert that the submitted information is excepted under sections 552.101 and 552.108, we address your arguments with respect to the entirety of the submitted information.

We begin by considering your arguments under section 552.101. Section 552.101 excepts from disclosure "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. *See* Gov't Code § 411.083. Some of the information submitted for our review is CHRI generated by TLETS and is excepted from required public disclosure under section 552.101 of the Government Code. We have marked the information the city must withhold under section 552.101 in conjunction with chapter 411 of the Government Code. We note that the requestor can obtain his own CHRI from DPS. Gov't Code § 411.083(b)(3).

Under *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. In this case, you claim that the request for information "amounts to a criminal history of a person or persons other than the requestor." We agree that portions of the information consist of a compilation of the criminal history of individuals other than the requestor. *See id.* Consequently, the city must withhold incident report number 91-3685758 in addition to other the information we have marked based on the common-law right to privacy and the *Reporters Committee* case.

We next note that one of the submitted reports is excepted under section 552.101 in conjunction with the common-law right to privacy. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy, but because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also* *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this case, the requestor knows the identity of the victim involved in offense report

97-2071364. We therefore believe that withholding only identifying information from the requestor in this report would not preserve the victim's common-law right to privacy. Therefore, we conclude that the city must withhold offense report number 97-2071364 pursuant to section 552.101 in conjunction with common-law privacy. We have also marked additional information the city must withhold under section 552.101 in conjunction with common-law privacy.

We next note that the submitted information includes juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Such reports are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

One of the submitted incident reports involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 applies; therefore, incident report number 99-1220142 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this incident report from disclosure under section 552.101 of the Government Code.

We next note that some of the submitted information concerns the offense of statutory rape. Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that incident report number 02-4762147 consists of information used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, incident report number 02-04762147 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, you must not release this incident report to the requestor.

We now address your arguments under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. Based on the information you provided, we understand you to assert that certain incident report numbers concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable. Accordingly, you may withhold the following incident report numbers: 97-2191304, 98-3570854, 99-0540789, 00-4594655, 01-05-0905, 01-3280697, and 02-4843737. With the exception of the information we have marked as covered by section 552.101, you may also withhold under section 552.108(a)(2) the information on the memorandum, which you have highlighted.

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, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(2) authorizes you to withhold the remaining information 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.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. Under section 552.101 and the common-law right to privacy, the city must withhold from disclosure the entirety of incident report number 97-2071364 and the portions of the memorandum we have marked. You must withhold from disclosure incident report number 99-1220142 pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. The city must withhold from disclosure information relating to incident report number 02-4762147 pursuant to

section 552.101 in conjunction with section 261.201 of the Family Code. Portions of the memorandum, as well as incident report numbers 97-2191304, 98-3570854, 99-0540789, 00-4594655, 01-05-0905, 01-3280697, and 02-4843737 may be withheld from disclosure under section 552.108(a)(2), with the exception of basic information. The remaining information must be released to the requestor.

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. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 170149

Enc: Submitted documents

c: Mr. Uriah Zimmerman
2205 Bitter Creek Drive
Austin, Texas 78744
(w/o enclosures)