



October 28, 2002

Ms. Kelly N. Saucier
Assistant City Attorney
Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2002-6085

Dear Ms. Saucier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171360.

The Missouri City Police Department (the “department”) received a request for seventeen categories of information related to a particular crime. You state that there are no records responsive to items 9, 10, 12, 15, and 16 of the request.¹ You advise that you are releasing some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.027, 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first address your contention that the department is not required to disclose some of the requested information pursuant to section 552.027 of the Government Code. Section 552.027 provides:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or

¹ The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismiss’d); Open Records Decision No. 452 at 3 (1986).

publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

...

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

You claim that the department need not provide the requested copies of newsprint or press releases based on section 552.027. We agree that to the extent the information at issue consists of information in a commercially available book or publication acquired by the department for research purposes, the department need not comply with this portion of the request. However, section 552.027 is not applicable to any of the requested newsprint or press releases that are not contained in a commercially available book or publication acquired by the department for research purposes, and any such information must be released.

We now turn to your claim 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. 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. However, the definition of CHRI does not encompass driving record information maintained by the DPS. *See* Gov't Code § 411.082(2)(B). A portion of the information submitted for our review is CHRI generated by TCIC and NCIC. Accordingly, with the exception of the information that we have marked for release, the information designated as CHRI is excepted from required public disclosure by section 552.101 of the Government Code.

Further, sections 411.192 and 411.193 of the Government Code govern the release of all information maintained by the Department of Public Safety concerning the licensure of individuals to carry a concealed handgun. Section 411.192 provides:

The department shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. The department shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. *Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee. The department shall notify a license holder of any request that is made for information relating to the license holder under this section and provide the name of the person or agency making the request. This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.*

Gov't Code § 411.192 (emphasis added). Section 411.193 further states:

The department shall make available, on request and payment of a reasonable fee to cover costs of copying, a statistical report that includes the number of licenses issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder.

Gov't Code § 411.193. The submitted documents contain information that is confidential under section 411.192 of the Government Code. In addition, we find that the circumstances of this request do not meet the access requirements of that section. Accordingly, this information must be withheld under section 552.101 of the Government Code.

We note that a social security number contained in the remaining information may be confidential under federal law. A social security number may be withheld in some circumstances 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). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Next, we address your claims under 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." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that some of the requested information, which you have marked, pertains to a case in which an investigation is ongoing and that release of the information would therefore interfere with law enforcement and prosecution. Based on your representations, we conclude that the release of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *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); Open Records Decision No. 216 at 3 (1978). Thus, you may withhold the information at issue under section 552.108(a)(1). While basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108(c), you state that you have released basic information related to the investigation.

You have marked some additional information that you argue is excepted under section 552.108(b)(1) because it consists of internal notations created and maintained by investigation officers. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." You indicate that the records at issue relate to the same incident in which an investigation is ongoing. Therefore, we conclude that the public

release of this information would also 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). Again, you indicate that you have released basic information related to the investigation, in accordance with section 552.108(c). Thus, the department may withhold the information at issue from disclosure based on section 552.108(b)(1). We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, you claim that some information is excepted from disclosure under section 552.136. Section 552.136 makes certain account numbers confidential. It provides as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(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.

Gov't Code § 552.136. Pursuant to section 552.136, we have marked the credit card numbers you must withhold.

In summary, you must withhold the information designated as CHRI, with the exception of the information we have marked for release, and information maintained by the Department of Public Safety concerning the licensure of individuals to carry a concealed handgun under section 552.101. A social security number contained in the submitted information may be confidential under section 552.101 and the federal Social Security Act. You may withhold the information that you have marked pursuant to sections 552.108(a)(1) and (b)(1). We have marked the credit card numbers that you must withhold under section 552.136. With the exception of any information to which section 552.027 applies, the remaining requested information that has not already been released must be released.

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,

A handwritten signature in cursive script that reads "Kristen Bates". The signature is written in black ink and is positioned above the printed name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 171360

Enc. Submitted documents

c: Mr. Brian Chandler
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(w/o enclosures)