



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 27, 2003

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-1272

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177068.

The Travis County Sheriff's Office (the "sheriff") received a request for information relating to a specified address. You state that some responsive offense reports have been released to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 261.201(a) of the Family Code provides as follows:

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

One of the responsive incident reports relates to allegations of child abuse. Thus, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the documents we have marked are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold the marked documents from disclosure under section 552.101 of the Government Code as information made confidential by law.²

Next, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 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

²We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

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

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon).

This office previously concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, did not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). The legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code.

A portion of the submitted information involves conduct that occurred after September 1, 1997. Several of the responsive offense reports involve a juvenile suspected of delinquent conduct or conduct indicating a need for supervision. It does not appear that any of the exceptions in section 58.007 apply; therefore, we have marked the information that is confidential pursuant to 58.007(c) of the Family Code. You must withhold the marked information from disclosure under section 552.101 of the Government Code. As you acknowledge, however, some of the reports pertain to juvenile conduct that occurred between January 1, 1996 and September 1, 1997. We find that report numbers 9700006663, 9700008540, 9700057700, and 9700060725 pertain to conduct that occurred between January 1, 1996 and September 1, 1997, and consequently, are not subject to the confidentiality provisions of either former section 51.14(d) or the current section 58.007 of the Family Code. We therefore determine that report numbers 9700006663, 9700008540, 9700057700, and 9700060725 may not be withheld under section 552.101.

The remainder of the reports you seek to withhold as juvenile law enforcement records either do not identify a juvenile as a suspect, or do not indicate that delinquent conduct or conduct indicating a need for supervision is being alleged. We note that section 58.007 applies to information that involves a juvenile suspect or offender, but does not apply where the information in question involves only a juvenile complainant or witness. We determine that the remainder of the reports you seek to withhold as juvenile law enforcement records cannot be withheld under section 552.101 in conjunction with section 58.007 or former section 51.14(d) of the Family Code.

We next address the responsive information involving adult offenders. We note that some of this information is subject to 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The adult offender records at issue include completed incident reports. Therefore, as prescribed by section 552.022, the sheriff must release the completed reports unless they are excepted from disclosure under section 552.108 or confidential under other law. You claim that some of the reports at issue may be excepted under section 552.103 of the Government Code. Section 552.103, however, is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.– Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the sheriff may not withhold the completed incident reports at issue under section 552.103 of the Government Code.

You also claim that the adult offender information at issue is excepted under section 552.108. Section 552.108 of the Government Code provides in pertinent part:

(a) 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:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) 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[.]

...

(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 [required public disclosure] if:

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

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

A governmental body claiming section 552.108(a)(1) 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). 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. You have marked incident report number 020021160 as information you claim is excepted under 552.108. You indicate that incident report number 020021160 pertains to a pending criminal prosecution. Based upon this representation, we determine that the release of incident report number 020021160 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).

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) (summarizing types of information considered to be basic information). Thus, you must release the types of information that are considered to be front page offense report information from offense report number 020021160, even if this information is not actually located on the front page of the incident report. Although section 552.108(a)(1) authorizes you to withhold the remainder of incident report number 020021160 from disclosure, you may choose to release all or part of incident report number 020021160 that is not otherwise confidential by law. *See* Gov't Code § 552.007.

With respect to the remaining reports pertaining to adult offenders, you state that “prosecution of several of the recorded incidents is ongoing.” You also state, however, that “several of the investigations were closed without conviction or deferred adjudication.” We are unable to determine from the information provided which of the remaining records pertain to criminal investigations that are currently pending, and which of the remaining records pertain to criminal investigations that have concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(1), (a)(2), (b)(1), (b)(2); *see also* Gov't Code § 552.301(e) (governmental body receiving an open records request for information that it wishes to withhold is required to submit to this office a copy of the

specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents). We therefore find you have failed to demonstrate that section 552.108 applies to the remaining adult offender records. You also argue that the adult offender records at issue contain witness names and statements, the release of which would either “subject the witnesses to intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement authorities.” Upon review of the submitted information, however, we determine that you have not sufficiently established that release of the names and statements in the submitted records would interfere with the detection, investigation, or prosecution of crime. Consequently, we determine that the sheriff may not withhold any portion of the remaining records under section 552.108 of the Government Code.

We next address your claim under section 552.103 of the Government Code with respect to the remaining adult offender records. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a). You state that “it has been confirmed by the District Attorney’s Office and the County Attorney’s Office that prosecution is pending in the noted cases/incident reports.” However, you have not demonstrated that the sheriff is a party to pending criminal litigation. In this situation, we require an affirmative representation from the prosecuting attorney representing the governmental body that is a party to the litigation stating that the prosecuting attorney wants the submitted information withheld from

disclosure under section 552.103. We have not received any such representation from the prosecuting attorney. Based on the information provided, we find you have failed to demonstrate that section 552.103 applies to any of the remaining information. Consequently, we determine that the sheriff may not withhold the remaining records under section 552.103 of the Government Code.

Next, 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. Section 411.082(2) of the Government Code defines CHRI as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal charges and their dispositions." *See also* Gov't Code § 411.081(a)(1), (b) (chapter 411 does not apply to CHRI contained in posters, announcements or lists for identifying or apprehending fugitives or wanted persons, or to CHRI related to the offense for which a person is involved in the criminal justice system). You have marked information in the responsive records that you claim is CHRI and must be withheld. However, although you state that the sheriff obtained this information from the DPS and the TCIC and NCIC networks, we find that the information you have marked is not CHRI made confidential under subchapter F of chapter 411 of the Government Code. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with federal law or chapter 411.

You also contend that the remaining responsive records contain criminal history information that is protected by section 552.101 in conjunction with 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. *Industrial Found. v. Texas Indus.*

Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You contend that the responsive information includes a compilation of a named individual's criminal history. When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). You claim that a portion of the responsive information consists of a compilation of local law enforcement records. Upon review, however, we note that the information at issue is not a compilation of an individual's criminal history. Furthermore, we note that the request does not ask for a compilation of a named individual's criminal history, but rather for all information relating to a specified address. Therefore, we determine that the sheriff may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with the common-law right of privacy pursuant to the decision in *Reporters Committee*.

The responsive reports also contain social security numbers that you claim are excepted from disclosure under section 552.101 and common-law privacy. You acknowledge that the social security numbers were neither obtained nor maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. Consequently, the social security numbers are not made confidential under 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). You contend, however, that the social security numbers at issue are protected under common-law privacy. This office has previously determined that social security numbers are not protected under common-law privacy. Open Records Decision Nos. 622 at 2 (1994), 169 at 8 (1977). Thus, the sheriff may not withhold the social security numbers under section 552.101.

You argue that portions of the remaining records are excepted from disclosure under section 552.101 in conjunction with common-law privacy. Upon review, however, we find that none of the remaining records contain highly intimate or embarrassing information. Accordingly, we determine that none of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note that the information at issue contains information excepted under section 552.130 of the Government Code. Section 552.130 provides in pertinent 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;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state[.]

We have marked the information that the sheriff must withhold pursuant to section 552.130 of the Government Code. We note, however, that the requestor has a right of access to his own driver's license number. *See Gov't Code § 552.023.*³

In summary, the sheriff must withhold the marked report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must also withhold the reports we have marked in their entirety under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, the sheriff may withhold incident report number 020021160 from disclosure under section 552.108(a)(1) of the Government Code. The sheriff must withhold driver's license and state identification card information, except for the requestor's driver's license number, under section 552.130 of the Government Code. The remainder of the responsive records 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

³Because some of the responsive information is confidential with respect to the general public, if the sheriff receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

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 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 177068

Enc: Submitted documents

c: Mr. David Zurovetz
2201 West William Cannon Drive #110
Austin, Texas 78745
(w/o enclosures)