



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 10, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2003-4781

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 183992.

The Dallas Police Department (the "Department") received a media request for copies of police records regarding a specified murder investigation. You assert the some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We reviewed the representative sample of information you submitted and considered the exceptions you claim.¹

Initially, you assert section 552.108 of the Government Code excepts some of the submitted information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). 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 inform us

¹ We assume 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 those records contain substantially different types of information than that submitted to this office.

the information contained in the pages at issue pertains to “suspects investigated for the [named person’s] murder.” You explain these suspects “were never charged, convicted, or had deferred adjudication for this offense.” Based on your representations, we believe the documents you seek to withhold under section 552.108 relate to a criminal investigation of suspects that did not result in conviction or deferred adjudication. Therefore, we conclude section 552.108(a)(2) applies to this information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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), which includes a detailed description of the offense. Thus, with the exception of the basic front page offense and arrest information, the Department may withhold the information at issue based on section 552.108 of the Government Code. 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.

Next, with respect to the remaining information, we address your claims under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses the doctrine of common-law privacy. Common-law privacy protects information when (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined some personal financial information is highly intimate or embarrassing and thus, meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information). In this instance, the information remaining at issue contains personal financial information protected by common-law privacy. Therefore, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Further, we note when a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual’s right of 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). Therefore, to the extent the submitted documents contain criminal history information that implicates an individual’s right to privacy and identifies the individual as a suspect, arrestee, or defendant, the Department must withhold such information from the

requestor. *See id.* Accordingly, we have marked the information that the Department must withhold under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. We note the Department seeks to withhold a file identification number; however, this information is not protected by *Reporters Committee*. Furthermore, although one of the documents contains CHRI, there is a legitimate public interest in the information. Thus, such information is not protected by common-law privacy and must be released. We have marked the information the Department must release.

Also, we address the applicability of section 552.101 as it encompasses the confidentiality provisions of other statutes. First, federal law governs and restricts access to criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC"). *See* 28 C.F.R. §§ 20.1 *et seq.*; Open Records Decision No. 565 at 10-12 (1990). The relevant federal regulations permit each state to follow its own applicable law with respect to the CHRI that it generates. ORD 565 at 11-12. Sections 411.083 and 411.089 of the Government Code authorize a criminal justice agency to obtain CHRI from the Texas Crime Information Center ("TCIC"). However, CHRI obtained from the TCIC network may be released by a criminal justice agency only to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, CHRI generated by the federal government or another state may be obtained only in accordance with the relevant federal regulations, and CHRI obtained from the Texas Department of Public Safety or another Texas criminal justice agency through the TCIC must be withheld in accordance with subchapter F of chapter 411 of the Government Code. Accordingly, to the extent the Department maintains CHRI obtained from the NCIC or TCIC, it must withhold such information from the requestor under chapter 411 of the Government Code.

Second, you assert section Chapter 772 of the Health and Safety Code governs a portion of the submitted information. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). Based on your representation that the City of Dallas is part of an emergency communication district established under chapter 772, we conclude the Department must withhold the originating telephone number you marked in the documents at issue if it was furnished by a 9-1-1 service supplier pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code.

Third, as you note, section 773.091 of the Health and Safety Code governs some of the submitted information. This provision provides, in relevant part, as follows:

- (b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are

confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). Some of the responsive documentation constitutes emergency medical services (“EMS”) records. Further, the submitted information provides no indication that any of the exceptions to confidentiality set forth in section 773.092 apply in this instance. Accordingly, the Department must release the information described in section 773.091(g) and withhold the EMS records, which we have marked, under section 552.101 of the Government Code.²

Fourth, you contend chapter 61 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs, governs three pages of the submitted information. Article 61.02 provides that “a criminal justice agency may compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.” Code Crim. Proc. art. 61.02. In relevant part, article 61.03 provides as follows:

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Code Crim. Proc. art. 61.03(a). You indicate that the documents labeled “Gang Information” fall within the parameters of chapter 61 of the Code of Criminal Procedure. Further, article 61.05 of the Code of Criminal Procedure provides that release of such information to a person who is not entitled to the information is a Class A misdemeanor. Therefore, we conclude the Department must withhold the documents you have marked pertaining to street gangs under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

Fifth, we note the social security numbers contained in the information at issue may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990

² As section 773.091 of the Health and Safety Code is dispositive with respect to the documents at issue, we need not address your arguments under the Medical Practice Act.

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 numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 of the Government Code and the referenced federal provision. However, we caution the Department 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 no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Additionally, the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of *this* state. *See Gov't Code § 552.130*. In this case, the information at issue contains license plate numbers, vehicle identification numbers, title numbers, registration numbers, and associated dates. Therefore, the Department must withhold the information pertaining to motor vehicle records issued by *this* state, some of which you have marked, under section 552.130 of the Government Code. We have marked additional information the Department must withhold under this provision. We note one document may contain motor vehicle records information issued by the state of Washington, in which case the information does not fall within the purview of section 552.130.

Last, we note the submitted information subject to release contains copyrighted material. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 (1990)*.

In summary, with the exception of basic information, the Department may withhold the information it has identified under section 552.108 of the Government Code. The Department must withhold the following information under section 552.101 of the Government Code in conjunction with the stated judicial doctrine or statute: 1) the information we have marked under common-law privacy; 2) to the extent it exists, any CHRI obtained from the NCIC or TCIC under federal and state statutes; 3) the originating telephone number you marked, if it was furnished by a 9-1-1 service supplier under section 772.318 of the Health and Safety Code; 4) most of the records you have identified as "Emergency Medical Records" under the section 773.091 of the Health and Safety Code;

5) the information relating to gangs in accordance with article 61.03 of the Code of Criminal Procedure; 6) if applicable, the social security numbers under the 1990 amendments to the federal Social Security Act. Also, the Department must withhold the Texas motor vehicle records information under section 552.130 of the Government Code. Finally, though the Department must allow for the inspection of copyrighted information, it must not furnish copies of the copyrighted information. The Department must release the remainder of the submitted information 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 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,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 183992

Enc: Submitted documents

c: Mr. Haruna Okumura
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(w/o enclosures)