



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2003

Mr. Darell G-M Noga
Roberts & Smaby, P.C.
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2003-6170

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189871.

The City of Coppell (the "city"), which you represent, received a request for the following categories of information pertaining to a particular arrest:

- 1) The original video or copy of the video-tape from any mounted video camera, from any police vehicle responding to the scene of [the] arrest;
- 2) The original photographs, videotapes, or other visual reproductions of the arrest, taken at any time;
- 3) All written or transcribed statements of [the arrestee], any witnesses or any officer present at the scene of [the] arrest, prepared in conjunction with the arrest, or as part of any investigation, review or disciplinary proceeding regarding the false arrest of [the arrestee];
- 4) All documents, statements, or tangible items collected, prepared or obtained at the scene of the arrest, including those related to the underlying arrest; and
- 5) A copy of all statements, records, documents, materials, or items of any type provided to the Department of Public Safety, in any way arising out of or relevant to this matter[.]

You indicate that the city has released responsive public court documents, a payment authorization memorandum, prior correspondence with the requestor, and "front page"

information about the arrest. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that some of the submitted information is not responsive to the request at issue. We have marked this information, which need not be released to the requestor in this instance.

Next, we find that the remainder of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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

Gov't Code § 552.022(a)(1). The remainder of the submitted information consists of information from a completed investigation, and therefore must be released unless it is excepted from disclosure under section 552.108 of the Government Code or confidential under other law. You do not raise section 552.108 as an exception to disclosure. Furthermore, section 552.103 is a discretionary exception and is not other law for the purpose of section 552.022. Open Records Decision Nos. 663 (1999) (governmental body may waive sections 552.103 and 552.111). Therefore, the city may not withhold any of the responsive information under section 552.103 of the Government Code. Nevertheless, we will address whether any of the information at issue is excepted from disclosure under section 552.101, 552.117, or 552.130 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). 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. A portion of the submitted information is CHRI generated by TCIC and NCIC. We have marked this information, which the city must withhold under section 552.101 of the Government Code. We note that an individual can obtain his or her own CHRI from DPS. Gov't Code § 411.083(b)(3).

You also contend that social security numbers contained in the submitted information are confidential. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure 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.* However, we note that the only social security number contained in the submitted information belongs to the requestor's client. Because section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code is designed to protect the privacy interests of the individual to whom the social security number information belongs, we find that the requestor has a special right of access to the social security numbers contained in the responsive information. *See* Gov't Code § 552.023.

Similarly, the submitted documents contain fingerprint information that would normally be excepted from disclosure under section 552.101 in conjunction with section 559.003 of the Government Code. *See* Gov't Code § 559.003 ("A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552."). However, because section 559.003 is designed to protect the privacy interests of the individual to whom the fingerprints belong and, here, the fingerprints belong to the requestor's client, the requestor has a right of access to the fingerprint information. *See id.* § 552.023.

You also contend that Texas driver's license numbers contained in the submitted information are protected from disclosure. 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[.]

Thus, generally Texas driver's license numbers and license plate numbers are excepted from public disclosure under section 552.130. However, like the provisions protecting social security numbers and fingerprint information, section 552.130 is designed to protect privacy interests. Here, the only Texas driver's license and license plate information contained in the responsive information belongs to the requestor's client. Therefore, you must release the Texas driver's license number and license plate number contained in the responsive information to the requestor in this instance. *See id.*

You also contend that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117 protects the home address, home telephone number, social security number, and family member information of the following individuals: current or former officials or employees of a governmental body; peace officers as defined in article 2.12 of the Code of Criminal Procedure; commissioned security officers as defined in section 51.212 of the Education Code and section 1702.002 of the Occupations Code; current or former employees of the Texas Department of Criminal Justice; and peace officers, reserve law enforcement officers, commissioned deputy game wardens, municipal, county, or state corrections officers killed in the line of duty. You do not indicate, nor does it appear, that the individual whose address, telephone number, and social security number are contained in the submitted information is one of the listed individuals protected under section 552.117. Therefore, the city may not withhold any of the submitted information under that provision.

Finally, we note that portions of the submitted videotapes are excepted from disclosure under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer¹ that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted videotapes depict peace officers and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officers have executed any written consents to disclosure. Thus, the city must withhold any portion of the submitted videotapes

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

that includes the image of a peace officer under section 552.119, unless the city obtains written consent from the peace officers for their disclosure. The remaining portions of the videotapes are not protected under section 552.119 of the Government Code and must be released to the requestor. If, however, the city is unable to obscure the faces of peace officers on the videotape, or otherwise remove the portions of the videotape that include the images of peace officers, then the city must withhold the videotapes in their entirety under section 552.119.

In summary, the city need not release the submitted information that is not responsive to the current request, which we have marked. The city must withhold the CHRI we have marked under section 552.101 of the Government Code. The city must withhold the portions of the submitted videotapes that include images of peace officers, or if the city is unable to obscure the faces of peace officers on the videotapes or otherwise remove the portions of the videotapes that include the images of peace officers, then the city must withhold the videotapes in their entirety under section 552.119. The city must release the remainder of the requested 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).

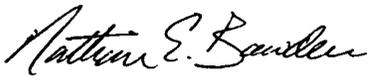
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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/lmt

Ref: ID# 189871

Enc: Submitted documents

c: Mr. Michael S. Francis
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(w/o enclosures)